ARKANSAS BANKING CODE OF 1997

State Bank Department
Rules and Regulations

Updated: March 15, 2003

March 15, 2003

ARKANSAS STATE BANKING BOARD

Position Number	Classification of Position	Entitled to Nominate	Incumbent	Term Expires	Congressional District
1	Bank Dept. Member	Bank Commissioner	David Bartlett	12-31-2004	4
2	Arkansas Bankers Association Member	Bankers Association	Gus Rusher	12-31-2005	1
3	Arkansas Bankers Association Member	Bankers Association	David Short	12-31-2007	3
4	Public Member	Governor	Theodore C. Skokos	12-31-2003	State at Large
5	Public Member	Governor	Charles Mazander	12-31-2006	2
6	Public Member	Governor	Bob Douglas	12-31-2003	State at Large

LEGAL HOLIDAYS

The following are legal holidays for all purposes:

New Year's Day--January 1;

Robert E. Lee's Birthday--Third Monday in January;

Martin Luther King's Birthday--Third Monday in January;

George Washington's Birthday--Third Monday in February;

Memorial Day--the last Monday in May;

Independence Day--July 4;

Labor Day--First Monday in September;

Veteran's Day--November 11;

Thanksgiving Day--Fourth Thursday in November;

Christmas Eve--December 24;

Christmas Day--December 25.

Pursuant to A.C.A. § 1-5-101 it is provided that holidays falling on Saturday will be observed on the preceding Friday and holidays falling on a Sunday will be observed the succeeding Monday.

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"THE ARKANSAS BANKING CODE OF 1997."

AS AMENDED

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

CHAPTER 45
SHORT TITLE, DEFINITIONS AND MISCELLANEOUS

23-45-101. Short Title.

This chapter may be referred to as "The Arkansas Banking Code of 1997."

23-45-102. Definitions.

(a) Subject to other definitions contained in subsequent sections of this chapter, and unless the context otherwise requires, in this chapter:

(1) "Affiliate" means, with respect to a specified person, a person that controls, is controlled by, or is under common control with another person;

(2) "Arkansas Bank" means a bank whose home state is Arkansas;

(3) "Arkansas bank holding company" means a bank holding company that controls one (1) or more state banks. For purposes of this definition, "control" has the meaning set forth in 12 U.S.C. 1841(a)(2);

(4) "Arkansas Banking Code" means The Arkansas Banking Code of 1997;

(5) "Bank" means a state bank, or a national bank or an out-of-state state-chartered bank which has received a certificate of authority under § 23-48-1001; provided that such term shall also include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(6)(A) "Bank holding company" means any company, foreign or domestic, including a bank:

(i) Which directly or indirectly owns, controls, or holds with power to vote twenty-five percent (25%) or more of the voting shares of any bank;

(ii) Which controls in any manner the election of a majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent (25%) or more of the voting shares of any bank or a bank holding company is held by trustees;

(B) Notwithstanding the foregoing:

(i) No company shall be a bank holding company by virtue of its ownership or control of shares which are acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis;

(ii) No company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of the solicitation;

(C) As used in this definition of "bank holding company," "company" means any corporation, limited liability company, or business trust doing business in this state but does not include any corporation the majority of the shares of which are owned by the United States or by any state;

(7) "Banking Board" means the Arkansas State Banking Board;

(8) "Bank premises" includes the state bank's or subsidiary trust company's main office site, all branch and other lawful office sites, the main office building and all other branch and other lawful office buildings, any or all of which may have additional space for occupancy by tenants, and any parking areas or parking structures which constitute adjuncts to any of the state bank or subsidiary trust company property.

(9) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising banks; and

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and their successors;

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the commissioner may by regulation prescribe;

(11) "Capital development corporation" means a corporation authorized to be organized under the provisions of the Arkansas Capital Development Corporation Act;

(12) "Commissioner" means the Bank Commissioner;

(13) "Court" means a court of competent jurisdiction;

(14) "Day" means a calendar day;

(15) "Department" means the State Bank Department of this state;

(16) "Department regulations" or "Department regulation" means regulations promulgated by the commissioner with the approval of the Banking Board;

(17) "Deposit" and "deposit account" mean the unpaid balance of money or its equivalent received or held by a bank in the usual course of its banking business and which represents a liability of the bank, for which it has given or is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or similar account, or which is evidenced by its certificate of deposit or similar certificate or a check or draft drawn against a deposit account and certified by the bank or a draft or cashier's, officer's or traveler's check or money order or similar instrument on which the bank is primarily liable (and which has not been paid) and such

other obligations or instruments of a bank as may be included in the definition of "deposit" or "deposit account" in Department regulations;

(18) "De novo charter" means a charter for a bank which has been in existence for less than five (5) years, but it does not include a charter which is issued in connection with the acquisition of assets or liabilities from a predecessor financial institution. A bank resulting from the conversion of a savings and loan association to a bank, from the conversion of a state bank to a national bank, or from the conversion of a national bank to a state bank shall be deemed to have been in existence, for the purpose of determining whether it has a de novo charter, from the date the converting institution came into existence;

(19) "Depository institution" means any bank, savings and loan association, state or federal credit union, or any corporation that the commissioner determines to be operating in substantially the same manner as such entities;

(20) "Federal financial institutions regulatory agency" means the Federal Reserve System, including its Board of Governors, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision, or their successors;

(21) "Financial institution" means any state bank, registered out-of-state bank, bank holding company, trust company, or subsidiary trust company;

(22) "Home state" means:

(A) With respect to a state-chartered bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located;

(C) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. 3103(c).

(23) "Home state regulator" means, with respect to an our-of-state state-chartered bank, the bank supervisory agency of the state in which such bank is chartered.

(24) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch;

(25) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets (including all or substantially all of the branches) and the assumption of all or substantially all of the liabilities of a bank whose home state is different from the home state of the acquiring bank, provided that the charter of the bank selling its assets is surrendered as a part of the transaction;

(26) “Main banking office” or “main office”, with respect to a bank, means the main banking office designated or provided for in the articles of incorporation of a state bank, and the main office designated or provided for in the articles of association of a national bank, at such identified location as shall have been or as hereafter may be approved by the commissioner, in the case of a state bank, or by the appropriate federal regulatory agency, in the case of a national bank;

(27) “Merging bank” means a bank which is a party to a merger or an interstate merger transaction and which is not the resulting bank;

(28) “National bank” means a national banking association organized pursuant to 12 U.S.C. 21-215b;

(29) “National trust company” means a company organized under the laws of the United States to conduct trust business and business incidental to trust business in this state, or of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as defined in subchapter 8 of Chapter 47 of this title;

(30) “Order” means all, or any part, of the final disposition, whether affirmative, negative, injunctive or declaratory in form, by the commissioner or the Banking Board, of any matter other than the making of regulations of general application;

(31) “Out-of-state bank” means a bank whose home state is any state other than Arkansas;

(32) “Out-of-state state-chartered bank” means any bank chartered under the laws of any state other than Arkansas;

(33) “Person” means an individual, corporation, partnership, joint venture, trust, estate, limited liability company or other unincorporated association or any other legal or commercial entity;

(34) “Predecessor financial institution” means a depository institution whose charter ceased to exist in connection with the purchase of its assets or the assumption of its liabilities by a successor bank;

(35) “Registered out-of-state bank” means an out-of-state bank which has a certificate of authority pursuant to the terms of Subchapter 10, Chapter 48, Title 23 of the Arkansas Code Annotated (23-48-1001 et seq.);

(36) “Resulting bank” means the bank resulting from a merger or conversion, or the bank purchasing over fifty percent (50%) of the assets or assuming over fifty percent (50%) of the liabilities of another depository institution in a purchase or assumption transaction or an interstate merger transaction;

(37) “Safe deposit box” means a safe, box or other receptacle for the safekeeping of property, which is located on a bank’s premises and leased by the bank to a lessee;

(38) “Savings and loan association” means a corporation carrying on the business of a savings and loan association or a building and loan association under a charter issued by this state, or any federal savings association or federal savings bank which is chartered under federal law;

(39) “State bank” means: (a) a corporation created pursuant to either Act 113 of the Arkansas General Assembly of 1913 or Act 179 of the Arkansas General Assembly of 1969 (or pursuant to any predecessor or successor act or acts of either of the foregoing) and existing and authorized under the laws of this state on May 30, 1997, to engage in a general commercial banking business; and (b) a corporation organized under the provisions of this chapter and authorized thereunder to engage in a general commercial banking business;

(40) “Subsidiary trust company” means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101, et seq. and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, § 23-32-1901 et seq., to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as that term is defined in said Subchapter 8 of Chapter 47 of this title.

(b) For the purposes of defining, “home state”, “host state”, “home state regulator”, “out-of-state bank” and “out-of-state state-chartered bank”, the term “state” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Marianas Islands.

23-45-103. Effect on existing financial institutions.

(a) The charters of state banks existing at the time of the adoption of this chapter shall continue in full force and effect, and all financial institutions and, to the extent applicable, all national banks and national trust companies, shall hereafter be operated in accordance with the provisions of this chapter, and other applicable law.

(b) Except as otherwise provided in this chapter, the repeal of any provision of Chapters 30-34 of this title at the time of adoption of this chapter shall not affect any right accrued or established, or any liability or penalty incurred, under such provision, prior to the repeal thereof.

(c) All powers granted in this chapter may be freely exercised by any financial institution to which such powers apply, without the necessity of amending its articles of incorporation, unless such articles expressly prohibit the exercise of such powers.

23-45-104. Unauthorized activity as a financial institution -- Incorporation of industrial loan institutions prohibited -- Individuals and partnerships not to transact general commercial banking business.

(a) From and after May 31, 1997,

(1) It shall be unlawful for any person, by whatever name called, to do business as a bank within this state or to maintain any office in this state for the purpose of doing such business, except state banks, registered out-of-state banks and national banks chartered to do business in this state.

(2) No certificate of incorporation for a new state bank in this state shall be issued, and no new state bank shall be permitted to engage in business within Arkansas except by permission of the commissioner and upon approval of an application for a new state bank charter by the commissioner and the Banking Board. The issuance of such certificate shall be within the sole discretion of the commissioner and the Banking Board, and the giving of such permission shall be within the sole discretion of the commissioner.

(3) Whenever it shall appear to the commissioner that any person is conducting business as a state bank without authority, the commissioner may determine that such person is fully subject to the commissioner's supervisory and regulatory powers, and to the provisions of the Arkansas Banking Code.

(4) No new industrial loan institution shall be incorporated in this state after the effective date of the Arkansas Banking Code.

(5) No partnership or individual, or other unincorporated person, may lawfully transact a general commercial banking business in this state after the effective date of the Arkansas Banking Code.

(6) No person, other than a bank, national trust company or subsidiary trust company, shall be authorized or permitted to engage, conduct or perform any business operations in this state in which it acts on behalf of others as a trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which banks, subsidiary trust companies and national trust companies are authorized to act.

(b) Nothing in this section shall be construed to prohibit or interfere with the operations of duly and lawfully organized savings and loan associations or credit unions qualified to do business in this state.

23-45-105. Headings.

The headings and captions contained in this chapter are for convenience only, do not constitute any part of the statutes comprising this Code, and shall not be used in construing or interpreting this chapter.

23-45-106. Rules of construction.

(a) Unless otherwise specifically indicated, and to the fullest extent permitted by the Constitution of Arkansas, any reference in this chapter to an existing state or federal statute or regulation shall mean to such statute or regulation as has been or may in the future be amended or supplemented. If in any case such construction is not constitutionally permissible, such reference shall mean to the statute or regulation as it existed on May 31, 1997.

(b) Unless the context otherwise requires:

(1) Any reference in this chapter to "applicable law," "existing law," or similar references, shall encompass the laws of the executive, legislative and judicial branches of the appropriate jurisdiction;

(2) Any reference in this chapter to the discretion of the commissioner shall mean the sole, uncontrolled discretion of the commissioner;

(3) Any reference in this chapter to the Federal Deposit Insurance Corporation shall also reference any successor thereof.

CHAPTER 46
STATE BANK DEPARTMENT AND STATE BANKING BOARD
SUBCHAPTER 1 – GENERAL PROVISIONS

23-46-101. Confidential records.

(a) Notwithstanding the Arkansas Freedom of Information Act § 25-19-101 et sec., the following records of the department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with Department regulations:

(1) All examination reports filed with the department;

(2) All records disclosing information obtained from examinations;

(3) Investigations and reports revealing facts concerning a financial institution, a capital development corporation, or the customers of such organizations; and

(4) All personal financial statements submitted to the department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may, in the commissioner's discretion, be disclosed as follows:

(1) Under a validly issued subpoena and, in the interest of justice, the commissioner may waive the privilege created herein and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction where such order is designed to protect the confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the financial institution; and

(3) To state and federal regulatory agencies with jurisdiction over financial institutions or entities engaging in financial activities, including, but not limited to, insurance and securities brokerage and underwriting.

(c) The commissioner shall have the power to promulgate regulations with regard to disclosure of confidential information.

SUBCHAPTER 2 – STATE BANK DEPARTMENT

23-46-201. Creation.

There is created and established, at the seat of government of this state, a department to be known as the State Bank Department.

23-46-202. Offices.

There shall be assigned, by the officer or board having custody of the public buildings, suitable offices for the business of the department, with the necessary conveniences for the transaction of business and the safekeeping of the records of the department.

23-46-203. Seal - Evidentiary effect - Fees.

(a) An appropriate seal shall be procured to be the official seal for the department.

(b) Every paper executed by the commissioner in pursuance of the authority conferred upon him by law and sealed with the seal of the department or certified by the department shall be received in evidence and recorded in the proper recording offices in the same manner as deeds regularly acknowledged.

(c) Whenever it is necessary for the commissioner to approve any instrument and to affix the official seal thereto, the commissioner shall charge a fee as provided by regulation for affixing his approval and the official seal to such instrument. Copies of all records and papers in the office of the department, certified by the commissioner and authenticated by the seal, shall be received in evidence in all cases equally and of like effect as the originals thereof. Whenever it is proper to furnish a copy of any paper filed in the department and to certify that paper, the commissioner may charge a fee as provided by department regulation.

23-46-204. Commissioner -- Appointment and removal.

(a) The Governor, by and with the advice and consent of the Senate, shall appoint a commissioner who shall:

(1) Be a resident of this state;

(2) Be at least thirty (30) years of age; and

(3) Have not less than five (5) years' experience either in practical banking or in the bank department of a state.

(b) The commissioner shall be the head of the department and shall hold his office for the term of four (4) years beginning from the date of actual appointment by the Governor and expiring four (4) years from that date and until a successor is appointed.

(c) The commissioner may be removed by the Governor from office for neglect of duty, malfeasance, misfeasance, extortion or corruption in office, incompetency, or mental or physical disability to such an extreme as to render the commissioner unable or unfit for the discharge of his duties, or for any offense involving moral turpitude while in office committed under color of or connected with such office.

(d) In the event there shall be an inability to serve in the office caused by death, suspension, removal, disability, disqualification or resignation of the commissioner, a deputy commissioner previously designated by the commissioner shall exercise the powers and perform the duties of the commissioner until a successor is appointed by the Governor, with the advice and consent of the Senate, who shall serve for the remainder of the unexpired term fixed by law.

23-46-205. Commissioner - Powers and duties.

(a) The commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

(b)(1) The commissioner shall have the power to issue such rules and regulations as may be necessary or appropriate to carry out the intent and purposes of all those laws and to issue cease and desist orders against any financial institution, or an officer, director or employee of any financial institution, found to be violating federal banking laws or regulations, violating the banking laws of this state or department regulations, violating any regulatory agreement, or jeopardizing the safety and soundness of any financial institution.

(2) The commissioner may issue rules or regulations only with the approval and consent of the Banking Board, but he shall have power to issue cease and desist orders upon his own motion. Nothing in this section shall be construed to curtail the commissioner's power to issue emergency rules and regulations with the approval and consent of the Banking Board.

(3) Any person subject to a cease and desist order issued by the commissioner that shall refuse or fail to comply with the terms of such order may be assessed a monetary penalty for such failure to comply with the provisions of the cease and desist order after a ten-day notice given by the commissioner to the institution or person subject to the order. The amount of the monetary penalty shall not exceed one thousand dollars ($1,000) per day of violation against each institution and each officer, director or employee contributing to the institution's or individual's failure to comply with the provisions of the cease and desist order. Subject to such limitation, the amount of the monetary penalty shall be determined by the commissioner.

(4) The commissioner may issue a cease and desist order for removal of an officer, director, employee, agent or any other person participating in the affairs of or otherwise connected with a financial institution subject to the supervision of the commissioner, or any affiliate thereof, from service to that institution or affiliate if he or she is found by the commissioner to be or of having been:

(A) Violating state or federal law, rules and regulations of a federal financial institutions regulatory agency, or department regulations;

(B) Acting incompetently, recklessly, or dishonestly;

(C) Indicted of a crime involving moral turpitude; or

(D) Otherwise impairing the safety and soundness of the financial institution.

(5) Any person aggrieved and directly affected by an order of the commissioner issued pursuant to this section is entitled to judicial review. A person so aggrieved may seek judicial review by petition to a chancery court having jurisdiction in the matter. Such petition must be filed within seven (7) days from the date of issuance of the order.

(c) Department regulations shall be distributed, in form and method selected by the commissioner, to all state banks chartered in the State of Arkansas.

(d) In addition to other powers, the commissioner shall have the power and authority to:

(1) Inspect and copy all books, records, and other information relating to the financial institutions he regulates;

(2) Restrict withdrawal of deposits from state banks under extraordinary circumstances;

(3) Subpoena witnesses, compel their attendance, require production of evidence, and administer oaths;

(4) Approve or disapprove applications for new state bank charters or branch facilities in connection with failed institutions as provided in § 23-48-511;

(5) Approve or disapprove applications for voluntary liquidations as provided in 23-49-119;

(6) Define any term or phrase used in this chapter which is not defined by this chapter;

(7) Issue orders, declaratory statements, disseminate information, and otherwise exercise discretion to effectuate the purposes of this chapter and all laws described in subsection (a) of this section, and to interpret and implement the provisions of those laws consistently with such purposes;

(8) Authorize state banks to engage in any banking activity in which national banks are authorized or may hereafter be authorized by federal legislation or regulations to engage; and

(9) Cooperate with federal financial institutions regulatory agencies.

(e) As soon as practicable after acceptance of any application referred to either in this chapter or in department regulations for filing, regardless of whether such application is of a type referred to in § 23-46-403, and receipt of the filing fee therefore, the commissioner shall cause the merits of the application to be investigated. The investigation shall enable the commissioner to determine the fitness of the applicants, and shall address all questions which bear directly or indirectly upon the appropriateness of granting the application and the need from the public standpoint for granting the application. To the extent that the commissioner deems it

appropriate, the scope of the commissioner's investigation of any application may include the investigation of those matters described in 23-48-304 pertaining to applications for new state bank charters.

23-46-206. Employment and duties of staff generally.

(a) The commissioner shall employ from time to time such assistants, examiners, clerks, stenographers, counsel and such other personnel as he may find necessary to properly and efficiently discharge the duties of his office. The commissioner shall be authorized to set minimum qualifications for these persons and to fix their levels of compensation within the limitations of the numbers of such employees and the appropriations for their salaries as provided from time to time by acts of the General Assembly, provided he shall incur no expense until an appropriation shall have been made therefore nor in excess of the revenues of the department.

(b) Counsel employed by the commissioner shall advise the commissioner in all legal matters affecting the department.

(c) Notwithstanding any other provisions of state law, and in order to maintain the confidentiality of information and the security of department personnel in the performance of their duties, the commissioner shall be authorized to establish travel reimbursement guidelines for payment of expenses of department personnel incurred in the performance of their duties.

(d) If the commissioner is not himself at any time available for the transaction of any specific matter committed by law to his authority or discretion, any one of the deputy commissioners, or any other staff member so designated by the commissioner in writing, may transact such matter in the name and stead of the commissioner.

(e) The commissioner, each member of the Banking Board, the deputy commissioners, chief examiners, counsel, each examiner, each accountant, each attorney, and each other officer, person and/or employee of or for the department shall not be personally liable for damages occasioned by his official acts or omissions, except when such acts or omissions are corrupt and malicious. The Attorney General shall defend any action brought against any of the above-mentioned persons by reason of his official acts or omissions, regardless of whether at the time of institution of the action the defendant has terminated his service with the department.

23-46-207. Interests in financial institutions prohibited.

(a) No employee or officer of the department who participates in the examination of a financial institution, or who may be called upon to make an official decision or determination affecting the operation of a financial institution, shall be an officer, director, attorney, owner, or holder of stock in any state bank, registered out-of-state bank or bank holding company which

controls a state bank or a registered out-of-state bank, or receive, directly or indirectly, any payment or gratuity from any such organizations. A person subject to this section may not borrow money from a state bank or registered out-of-state bank which is an out-of-state state-chartered bank except as provided in subsection (b) of this section.

(b) A person subject to this section may:

(1) Be a depositor in any financial institution that the department regulates, and participate in such overdraft programs associated with such deposit relationships as the commissioner may, by regulation, allow; and

(2) Purchase banking services, other than credit services, under rates and terms generally available to other customers of the financial institution.

23-46-208. Employee bonds.

(a) All employees shall be required to furnish bonds in such amounts as the commissioner shall deem sufficient to cover the liabilities of their respective positions, which bonds may be made by any guaranty company authorized to do business in this state.

(b) The fees paid by any officer or employee of the department to any guaranty or bonding company for a fidelity bond shall be considered and charged as expenses of the department. However, the expense of any fidelity bond written on a special deputy commissioner appointed as special liquidating agent for an insolvent state bank or subsidiary trust company shall be paid out of the assets of the insolvent state bank or subsidiary trust company.

(c) No expense shall be incurred until an appropriation shall be made for such purpose, and in no case shall any liability be created for the state in excess of the appropriation therefore.

23-46-209. Records and financial reports -- Disposition of funds.

(a) The commissioner shall keep a true and perfect record of all of the business of the department and shall make monthly reports to the State Auditor of all fees collected by him, which he shall promptly pay to the State Treasurer, taking duplicate receipts therefore, one (1) of which shall be filed with the Auditor of State.

(b) All fees and other revenues received by the department shall be deposited into the State Treasury as special revenues and credited to the Bank Department Fund to be used solely for the payment of the expenses of the department pursuant to the appropriations therefore.

(c) The Auditor of State shall, upon proper voucher from the commissioner, issue his warrant on the State Treasurer in payment of all salaries and other expenses incurred in the administration of this chapter.

23-46-210. Annual and biennial reports of commissioner.

(a) The commissioner shall make an annual report to the Governor of the work and the business of the department, which shall embrace a statement of all receipts and expenditures and the name, officers, directors, domicile, capital, surplus, net profits, and deposits of each state bank, in the state, and such other information as the commissioner deems advisable.

(b) He shall also, biennially, make a detailed estimate of the expenses of the department for the two (2) succeeding fiscal years.

23-46-211. Retention of department records.

(a) The department shall retain its general records for at least ten (10) years, with the following exceptions:

(1) Transcripts of hearings before the Banking Board or the commissioner shall be retained for at least three (3) years;

(2) Applications submitted to the department shall be retained for at least three (3) years;

(3) Articles of incorporation and amendments thereto, and stock transfer certificates and approvals shall be retained permanently, except in cases where such records concern a bank which has been merged, sold or liquidated, in which cases such records shall be retained for at least five (5) years.

(b) In lieu of retention of the original records thereof, the department may cause any or all of its records and records held at any time in its custody to be photographed or otherwise reproduced in permanent form. Any such photograph or other reproduction shall have the same force and effect as the original thereof, and be admitted into evidence equally as with the original.

SUBCHAPTER 3 – STATE BANKING BOARD

23-46-301. Creation -- Members -- Administration.

(a) There is created a commission which shall be known as the "State Banking Board".

(b)(1) The Banking Board shall be composed of six (6) members appointed by the governor, subject to confirmation by the Senate, for terms of five (5) years or until a successor has been appointed and qualified.

(2) At the time of their appointment, all members of the Banking Board shall be, and shall continue thereafter to be, residents of the State of Arkansas. They shall be of the age of thirty (30) years or over.

(3) Board members serving on May 30, 1997, shall continue to serve the remainder of their terms.

(c)(1) For purposes of filling vacancies on the Banking Board, members shall be numbered one (1) through six (6), inclusive.

(A) Three (3) members shall be designated banker members; two (2) members shall be designated public members; one (1) member shall be designated as the representative of the elderly. A banker member is a person whose primary occupation is banking; a public member is a person whose primary occupation is outside the field of banking; the representative of the elderly shall be sixty (60) years of age or older and shall not be actively engaged in or retired from the occupation of banking.

(B) One (1) of the banker members shall be designated the department member, and the other two (2) shall be designated the Arkansas Bankers' Association members. These positions are to be determined by lot.

(2) On the occasion of a vacancy on the Banking Board of a department member, a successor shall be selected from among two (2) or more bankers whose names shall be supplied by the commissioner.

(3) On the occasion of a vacancy in the Banking Board of one (1) of the Arkansas Bankers' Association banker members, a successor shall be selected from among two (2) or more bankers whose names shall be supplied by the Arkansas Bankers' Association.

(4) The Governor shall make the appointment of all successor Banking Board members from among those persons recommended as provided in this section, provided that the Banking Board shall consist of one (1) member from each of the four (4) congressional districts as prescribed in § 7-2-101 et seq., and two (2) members from the state at large, one (1) of whom shall be the representative of the elderly.

(d)(1) No member of the Banking Board shall receive, directly or indirectly, any compensation or recompense for his services on the Banking Board.

(2) Notwithstanding § 25-16-901 et seq., should any member of the Banking Board live outside the capital city of the state, he may, upon application to the commissioner, be reimbursed, out of the income of the office of the commissioner and in the manner provided by law, for such actual travel and subsistence expense as may actually have been incurred by him in connection with attendance at any meeting of the Banking Board.

(e) The office of the commissioner shall be the office of the Banking Board.

(f) The Banking Board may select as its secretary, a deputy bank commissioner or a stenographer employed in the office of the commissioner, but no compensation shall be paid to any person whatsoever for services rendered as secretary of the Banking Board.

(g) Except as provided in § 23-46-402, the presence at any meeting of at least four (4) members of the Banking Board shall be necessary to constitute a quorum, and the concurring votes of not less than a majority of the members present at any meeting shall be necessary to the

decision of any question or issue or the authorization of any action. The representative of the elderly shall be a full voting member.

23-46-302. Special Banking Board members.

(a) When any member of the Banking Board is disqualified for any reason to hear and participate in the determination of any matter pending before the Banking Board, the Governor shall appoint a qualified person to hear and participate in the decision on the particular matter.

(b) The special Banking Board member so appointed shall have all authority and responsibility with respect to the particular matter before the Banking Board of a regular Banking Board member but shall have no authority or responsibility with respect to any other matter before the Banking Board.

23-46-303. Study of banking statutes.

The Banking Board is authorized, at such times as it deems appropriate, to request a review or study of state banking law and recommend any changes that it may deem appropriate to the Governor.

23-46-304. Powers of the Banking Board -- Filings with the Commissioner.

(a) In addition to all other powers conferred by Arkansas law, the Banking Board shall have the power and duty to:

(1) Approve or disapprove all applications for charters for new state banks, except applications for new state bank charters in connection with failed institutions as provided in § 23-48-511;

(2) Approve or disapprove all applications for the merger or consolidation of one (1) or more banks, out-of-state banks, or savings and loan associations into a state bank;

(3) Approve or disapprove all applications for the purchase by one state bank of over fifty percent (50%) of the assets of another depository institution, and applications for the assumption by one state bank of over fifty percent (50%) of the liabilities of another depository institution;

(4) Approve or disapprove all applications by a savings and loan association to convert to a state bank;

(5) Approve or disapprove all applications for amendments to the articles of incorporation of an existing state bank;

(6) Approve or disapprove all applications for the relocation of a state bank’s main office from one municipality to another;

(7) Approve or disapprove all rules and regulations promulgated by the commissioner;

(8) Authorize a state bank under circumstances in which it is not given authority under state law to participate in any public agency hereinafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to banks or trust companies, and to authorize compliance with all requirements and conditions imposed upon such participants;

(9) Subpoena witnesses; and

(10) Require such clerical and technical assistance as is necessary or appropriate to carry out its duties.

(b) Upon the submission to it by the commissioner of each application, the Banking Board shall review the results of the commissioner's investigation and make such further investigation, if any, as it may deem appropriate to enable it to determine the fitness of the applicants, the need from the public standpoint for the granting of the application, and all other questions, whether or not of like kind with those referred to in this section, which bear directly or indirectly upon the need or desirability from the public standpoint for the granting of the application.

(c) Filing with the commissioner of any application or document required by this chapter or by department regulations shall be public notice of the matters contained in that application or document. The commissioner shall maintain such applications or documents in his custody. Upon request, the commissioner shall provide verification of the filing and reasonable access to inspection by the public. Nothing in this section shall be construed to modify the prohibitions upon the disclosure of confidential information contained in § 23-46-101, or the commissioner's authority to issue regulations concerning the disclosure of confidential information.

23-46-305. Applications.

(a) All applications for which the Banking Board is empowered to consider for approval or disapproval shall, as soon as practicable, be submitted by the commissioner to the Banking Board for consideration at a regular meeting of the Banking Board or at a special meeting called for the purpose thereof.

(b) Applications of the types described in subsections (a)(1) through (a)(4) of § 23-46-304 must demonstrate that the applicant has such minimum amount of capital as the commissioner may require.

SUBCHAPTER 4 – PROCEEDINGS BEFORE BOARD AND COMMISSIONER

23-46-401. Applicability.

Nothing in this subchapter is intended to have any application to:

(1) A merger under which a state bank merges into a national bank which is an Arkansas bank; or

(2) Any consolidation proceeding under which a state bank becomes consolidated into a national bank which is an Arkansas Bank; or

(3) Any proceeding under which a state bank is converted into a national bank or a national bank is converted into a state bank.

23-46-402. Meetings of board -- Notice.

(a)(1) The Chairman of the Banking Board or the commissioner may call a special meeting of the Banking Board upon notice through a personal communication with each member of the Banking Board by telephone or through a written notice transmitted by ordinary, certified, or registered mail, personal delivery, overnight delivery, or telefacsimile directed to each member of the Banking Board at his business or residence address as shown on the records of the Banking Board.

(2) The records of the department shall affirmatively reflect the time and manner in which the meeting was called and notice thereof given.

(b) The Banking Board members may waive any notice of a special meeting by signing a written consent to the holding of the meeting or by appearing at the meeting and participating therein.

(c) In the instances where notice of a special meeting is not waived by the Banking Board members, such notice shall be given to the Banking Board members at least fourteen (14) days before the meeting.

(d) If at any time it is impossible for the commissioner or the chairman to give notice of a meeting to Banking Board members because of the death, disability, or absence from the state of such members, a meeting of the Banking Board may be called by notice given to such members as are available. In this event, the unanimous action of three (3) of the members who were so served with notice shall be the action of the Banking Board. This rule shall also be applicable in situations where, under subsection (g) of this section, the Banking Board is permitted to act informally without a fixed meeting.

(e) The Banking Board may also hold regular meetings on dates fixed in its procedures, policies, and regulations.

(f) The Banking Board may permit any or all of its members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(g) Matters other than applications described in this section requiring the Banking Board's consideration, and which are not contested may, in the commissioner's discretion, be considered by the Banking Board through mailing or delivering of all necessary documents and correspondence to all Banking Board members no formal meeting being necessary. Applications submitted to the Banking Board according to this procedure must be filed with the commissioner for at least three (3) days prior to submission to the Banking Board with no protests having been filed. Where the application is thus submitted, the written approval or disapproval endorsed upon the application, or a copy thereof, and transmitted to the commissioner by at least four (4) members of the Banking Board shall represent the action of the Banking Board.

23-46-403. Applications -- Publication of notice.

When any of the following applications are filed with the commissioner, the sponsors of such applications shall give notice of filing in accordance with department regulations:

(a) An application for the issuance of a new state bank charter;

(b) An application for the merger or consolidation of one (1) or more banks into a state bank;

(c) An application for the merger or consolidation of one (1) or more savings and loan association into a state bank;

(d) An application for the purchase by one (1) state bank of over fifty percent (50%) of the assets of another depository institution, or an application for the assumption by one (1) state bank of over fifty percent (50%) of the liabilities of another depository institution; or

(e) An application for the change of a state bank's place of business from one municipality to another.

23-46-404. Applications fees -- Commissioner regulations.

(a) The Banking Board shall have the power to set and impose fees for any and all applications, regardless of whether such applications are of a type described in § 23-46-403, which are reasonably calculated to defray the costs associated with the consideration, investigation and processing of those applications.

(b) The commissioner may issue rules and regulations specifying the circumstances under which any application must be filed, and the procedural and substantive requirements governing the filing of any and all applications of whatever type. The commissioner may also issue rules and regulations requiring the submission of applications that are not described in this chapter.

23-46-405. Investigation -- Notice of hearing.

(a) When the departmental investigation pursuant to §§ 23-46-205 or 23-48-304 is closed, and the application fees have been paid, an application filed pursuant to § 23-46-403 shall be referred to the Banking Board for consideration by it and the commissioner at a public hearing.

(b) Notice of the time, place, and purpose of the meeting shall be given at least thirty (30) days before the hearing as follows:

(1) By letter from the commissioner to the sponsors of the application and any protestant that has filed an official written protest to the application; and

(2) By release to news media.

23-46-406. Hearing.

(a) No person shall appear in opposition to the application unless such person has filed a written protest to the application within fifteen (15) days after the actual filing of the application. Such protest must be accompanied by a filing fee of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for each protestant, such amount to be set by department regulation.

(b) At the hearing all persons sponsoring the application and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.

(c) The commissioner will participate with the Banking Board in the hearing.

(d) The Banking Board or the commissioner may subpoena witnesses on their own motion or on the request of any party to the proceedings.

(e) The admission of evidence at such hearing shall be controlled by § 25-15-213. The parties shall have the right to cross-examine witnesses. Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Banking Board's specialized knowledge. The parties may bind themselves by stipulation.

(f) The applicant shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the applicant to furnish at least one (1) copy of the transcript to the commissioner free of charge.

23-46-407. Decision --- Judicial review.

(a) The Banking Board shall render its decision in writing, at or after a hearing before it, which decision shall include the Banking Board's findings of fact and conclusions of law.

(b)(1) If the application is approved by the Banking Board, the commissioner may, in the event that he also shall approve the application, grant the relief sought. If the commissioner does not concur in the Banking Board's grant of the application, the relief sought shall not be

granted, and the commissioner's written decision stating his reasons for not concurring shall be attached to the copy of the Banking Board's decision and shall be mailed to each person which actively appeared and participated in the hearing.

(2) If the Banking Board shall disapprove the application, the commissioner shall not grant the relief sought.

(c)(1) The time for filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the date the final decision of the Banking Board is mailed or delivered, in written form, to the parties desiring to appeal.

(2) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

SUBCHAPTER 5 – REPORTS AND EXAMINATIONS

23-46-501. Call for reports.

The commissioner shall have power to call for reports from state banks and subsidiary trust companies whenever deemed necessary, in order to obtain a full and complete knowledge of their condition or the status of their reserves, but he shall call upon each of them for at least two (2) reports each year.

23-46-502. Statement on call.

(a) Every state bank and subsidiary trust company operating under the supervision of the commissioner shall make to the commissioner, whenever required by him, a statement of its assets and liabilities as shown by its records at the close of business on the day designated, which day shall be prior to the call of the commissioner.

(b) The commissioner shall not give notice to any person whomsoever of the date on which he will call for the statement.

(c) The reports shall be verified by the institution's president, or a vice president, and in addition thereto, shall be attested by not less than two (2) directors.

(d)(1) The reports required by this section shall embrace the amount of paid-up capital, surplus, net undivided profits, deposits, and all other liabilities of whatsoever character.

(2)(A) It shall also state the amount loaned upon real estate, notes, bills of exchange, overdrafts, bonds, and other securities, stating the actual market value of the bonds or securities, the amount invested in real estate for banking premises, other real estate owned, when and how acquired, and the actual cost, cash on hand and on deposit in other banks, subject to check, with the amount and character of all other assets, together with such other information as the commissioner may require.

(B) Any commercial or other unsecured paper past due twelve (12) months, on which the interest is unpaid and not in process of collection, shall not be included as an asset in the report.

23-46-503. When examinations made.

(a) The commissioner shall, as often as may be deemed necessary or proper, appoint suitable persons to make an examination of each state bank or subsidiary trust company.

(b)(1) A thorough examination into the affairs of each state bank or subsidiary trust company shall be made at least once every twenty-four-month period; provided however, the twenty-four-month period may be extended to a thirty-six-month period if an interim thorough examination is performed by the state bank's or subsidiary trust company's primary federal regulatory authority.

(2) The commissioner may authorize examinations at more frequent intervals if he shall deem it proper.

23-46-504. Examination of affiliates.

The commissioner may make at any time, and from time to time, such examinations of the affairs of affiliates of state banks or of affiliates of subsidiary trust companies as shall be necessary to disclose fully the relations between the state banks and their affiliates or between the subsidiary trust companies and their affiliates, and the effect of those relations on the affairs of the state banks or subsidiary trust companies.

23-46-505. Noncompliance with banking law -- Special examinations.

Whenever it shall come to the knowledge of the commissioner that any state bank or subsidiary trust company has failed or refused to comply with any of the provisions of this chapter, with any provision of federal law or federal regulations applicable to financial institutions, with any department regulations, or with any direction of the commissioner made specifically to that state bank or subsidiary trust company as a result of an examination into its affairs, he is authorized, as a penalty for that failure or refusal, to make a special examination of the state bank or subsidiary trust company, to charge and collect the same fees therefore as for a regular examination and to continue such examinations and charges at intervals of thirty (30) days or less until such provisions, regulations, and directions are complied with.

23-46-506. Examination procedure.

(a) The commissioner or any examiner appointed by him shall have power to make a thorough examination of all the records and affairs of any state bank, any Arkansas bank holding company, or any subsidiary trust company.

(b)(1) In making examinations, the representative of the department may examine under oath any stockholder, director, officer, agent, clerk, or other employee or representative of the state bank, Arkansas bank holding company, or subsidiary trust company, or any other person, touching the matters he may be authorized to inquire and examine into.

(2) He may subpoena and, by attachment, compel the attendance of any person in this state to testify under oath before him in relation to the affairs of the state bank, Arkansas bank holding company, or subsidiary trust company. All witnesses who appear in obedience to a subpoena shall be entitled to and shall receive the same per diem fees and mileage as witnesses in civil cases in the circuit courts of this state.

(c)(1) The representative of the department making the examination shall make a detailed report of the financial institution so examined, which report shall be filed in the office of the commissioner.

(2) All comments or criticisms contained in each report shall be presented to the board of directors by the management of the financial institution so examined promptly after receipt thereof.

23-46-507. Information furnished state or federal agencies.

(a) The Bank Commissioner may share with or furnish to any state or federal examiner or regulatory agency, with jurisdiction over any financial institution or other entity conducting financial activities, including but not limited to, insurance or securities brokerage or underwriting, copies of any or all examinations or any information with reference to the condition of the affairs of any state bank, subsidiary trust company, or other institution which the State Bank Department regulates.

(b) The commissioner is authorized to enter into cooperative arrangements with state and federal regulatory agencies to achieve the purposes of this chapter.

23-46-508. Noncooperation with examiners.

(a) The commissioner may revoke a state bank's or subsidiary trust company's authority to transact business and may proceed to wind up its business whenever any officer of the state bank or subsidiary trust company:

(1) Refuses to submit the books, papers, and effects thereof to the inspection of the commissioner or examiners; or

(2) In any manner obstructs or interferes with the commissioner, or examiner, in the discharge of his duties; or

(3) Refuses to be examined on oath touching the affairs of the financial institution.

(b) The commissioner may issue a cease and desist order whenever an officer of any financial institution acts in any manner described in subsections (a)(1) - (a)(3) of this section.

23-46-509. Assessment fees, application fees, and other Department fees.

(a) Every state bank and subsidiary trust company shall pay to the department, within ten (10) days after notice from the commissioner in the months of January and July of each year, an assessment fee which will be charged in accordance with an assessment fee schedule approved by the commissioner.

(b) The commissioner, with the approval of the Banking Board, shall also have the authority to establish a schedule of fees to be charged by the department relative to applications which are reviewed by the department, as well as a schedule of other fees to be charged for service performed by the department.

(c) For each examination made in excess of two (2) per year, the state bank or subsidiary trust company so examined shall pay an additional assessment equal to the January assessment of the year in which the excess examination is made.

(d)(1) The assessments provided for in this section may be reduced by the commissioner if the assessments, with other fees received by the department, produce a greater sum than is required to pay the expenses of the department.

(2) The assessments may be increased if not sufficient, in connection with other fees received as aforesaid, to defray the expenses of the department.

23-46-510. Failure to make report or pay fees -- Penalty.

(a) Any financial institution that refuses or fails, for thirty (30) days after notice from the commissioner, to make any report to the commissioner, or fails to pay any fees for ten (10) days after the date of notice by the commissioner, shall be given an additional notice through personal service or by letter from such person of the office of the commissioner as the commissioner may designate.

(b) If the failure continues for ten (10) days after the receipt of the additional notice, then the commissioner may assess a monetary penalty against the financial institution for each separate failure or refusal of one hundred dollars ($100) each day for the first thirty (30) days after receiving the notice of delinquency from the commissioner and one thousand dollars ($1,000) per day of violation for every day thereafter. Alternatively, in the case of a state bank or subsidiary trust company, if the failure continues for ten (10) days after the receipt of the

additional notice, the commissioner may take charge of the state bank or subsidiary trust company, as provided in case of insolvency.

23-46-511. Retention of records.

(a) Every state bank or subsidiary trust company shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this section.

(b) Each state bank or subsidiary trust company shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the commissioner and Banking Board shall, in accordance with the terms of this section, require to be retained permanently.

(c) All records, other than those described in subsection (b) of this section, shall be retained for such periods as the commissioner and Banking Board, in accordance with the terms of this section, shall prescribe.

(d) The commissioner shall issue regulations, with the approval of the Banking Board, prescribing the period for which records must be maintained. Such periods may be permanent or for a term of years.

(e) Any state bank or subsidiary trust company may dispose of any records which have been retained for the period prescribed in accordance with the terms of this section and shall, after it has disposed of a record, thereafter be under no duty to produce such record in any action or proceeding.

(f) In lieu of retention of the original records, any state bank or subsidiary trust company may cause any or all of its records, and records held at any time in its custody, including those held by it as a fiduciary, to be photographed or otherwise reproduced in permanent form. Any such photograph or other reproduction shall have the same force and effect as the original thereof and be admitted into evidence equally as with the original.

23-46-512. Changes in chief executive officer and directors.

Every financial institution shall report promptly to the commissioner any change for whatever reason in the chief executive officer and directors, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer and directors.

CHAPTER 47
BANK POWERS
SUBSIDIARY TRUST COMPANIES
SUBCHAPTER 1 – POWERS GENERALLY

23-47-101. Powers of State banks generally.

(a) Subject to any Department regulations, and consistent with any restrictions imposed by this act, each state bank shall, unless it shall be determined to be unsafe and unsound by the Commissioner, and without specific mention thereof in its articles of incorporation, have the following powers and be permitted, in addition to other powers conferred upon it by other provisions of law:

(1) To receive by any means money for deposit and to provide by its rules or by agreement for the terms of withdrawal and payment of interest thereon pursuant to the provisions of subchapter 2 of this chapter;

(2) To receive by any means money for transmission to another person and to transmit money by any means to another person;

(3) To buy, sell, and exchange coin and bullion;

(4) To buy, sell and exchange bonds and certificates of indebtedness issued or guaranteed by the United States, its agencies and instrumentalities thereof, the state of Arkansas or of any other state, or of any city, county, school district, or other municipal corporation, improvement district, public facilities board or other agencies or instrumentalities of such state or states;

(5) To purchase and sell securities (other than bonds and certificates of indebtedness described in subsection (4) of this section) and stock without recourse, solely upon the order, and for the account of customers and other persons, and in no case for its own account;

(6) To purchase, sell, and exchange for its own account securities pursuant to the provisions of 23-47-401;

(7) To lend money, either without security or upon such security as the bank may require, pursuant to the provisions of subchapter 5 of this chapter;

(8)(A) To issue capital notes, with or without conversion features, with the prior written approval of the Commissioner; and

(B) To otherwise become indebted to other persons through other types of obligations, including purchase money obligations, leases, Federal Home Loan Bank and Federal Reserve Bank advances, federal funds transactions, securities repurchase agreements, all without limitations on interest rates and term;

(9) To have such amounts of authorized but unissued stock as it may deem appropriate;

(10) To purchase insurance, including key-man insurance, and to establish employee and director benefit plans including, without limitation, stock options, and stock purchase and compensation plans;

(11) To own and lease personal property acquired upon the specific request and for the use of a customer and to incur obligations incident thereto, the lease obligation to be subject to borrower loan limits and to a schedule of periodic regular rental payments which shall be consistent with a timely recovery by the bank of its cost for the leased property;

(12) To make contributions to or for the benefit of the following:

(A) The United States, any state, territory, or political subdivision thereof, the District of Columbia, or any possession of the United States, for exclusively public purposes;

(B) A corporation, foundation, trust, community chest, or other organization created or organized in the United States, or any state or territory, or the District of Columbia, or any possession of the United States, exclusively for religious, charitable, scientific, veteran rehabilitation service, civic enterprise, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or

(C) Other lawful expenditures, contributions and donations, to the extent authorized, approved or ratified by action of the board of directors of the bank, except as otherwise specifically provided or limited by its articles of incorporation, its bylaws, or by resolution adopted by its stockholders;

(13) To service loans made by it or by others, whether or not held by the bank;

(14) To warehouse or act as agent in warehousing mortgages and other loans;

(15) With the prior approval of the Commissioner and subject to such conditions as may be prescribed by the Commissioner, to provide messenger service between the bank and its customers;

(16) To engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary pursuant to the provisions of 23-47-601;

(17) To invest in bank service companies pursuant to the provisions of 23-47-603;

(18) To invest in a capital development corporation pursuant to the provisions of 23-47-604;

(19) To invest in a community development company pursuant to the provisions of 23-47-605;

(20) To invest in small business investment companies and minority enterprise small business investment companies as defined by the Small Business Act of 1958, as amended, pursuant to the provisions of 23-47-606;

(21) To invest in corporations organized under the Edge Act as amended, pursuant to the provisions of 23-47-606;

(22) To operate a travel agency;

(23) To engage in leasing real property;

(24) To act as escrow agent and closing agent;

(25) To act as a fiscal or transfer agent, assignee, receiver and depository;

(26) To act as an executor, administrator, trustee or other fiduciary pursuant to the provisions of subchapter 7 of this chapter;

(27) To guaranty signatures;

(28) To provide third party payment services;

(29) To issue, advise and confirm letters of credit;

(30) To act as an agent to collect checks, drafts and other items of commercial paper, to become a member of a clearing house and to grant security interests in its assets for its qualification therein;

(31) To receive property as custodian for safekeeping;

(32) To lease safe-deposit boxes pursuant to the provisions of subchapter 9 of this chapter;

(33) To enter into agreements to provide for losses arising from the cancellation of outstanding loans upon the death of borrowers;

(34) Through a separate subsidiary, to act as agent in the sale of title insurance and perform title searches and other abstractor services;

(35) To invest in clearing corporations and banker's banks;

(36) To invest in bank premises real estate pursuant to the provisions of 23-47-103;

(37)(a) To acquire, develop, and dispose of real estate through foreclosure or in lieu of foreclosure of debts previously contracted in the ordinary course of its banking business, including single family lots and single family residences consisting of one (1) through four (4) family units.

(b) In addition to the foregoing, a state bank may exercise any other powers which are incidental to the business of banking.

(c) In addition to the powers conferred upon state banks under this or any other law of this state, upon action of the Commissioner authorizing state banks to undertake such activities, a state bank may engage in any banking activities in which state banks could engage were they acting as national banks at the time such authority is granted.

(d) If a state bank or bank holding company is located in a town with a population of fewer than two thousand five hundred (2,500) people, according to the latest federal decennial census, the bank or bank holding company may acquire, purchase, or construct a dwelling for use

as the residence of the bank's or bank holding company's chief executive officer as part of his compensation. The expenditure for the dwelling shall not exceed one hundred thousand dollars ($100,000).

23-47-102. Acquisition and disposition of own stock.

(a) No state bank shall be the purchaser or holder of its own capital stock, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.

(b) Stock so purchased or acquired shall be sold or disposed of as expeditiously as possible within twenty-four (24) months of its purchase or acquisition. After the expiration of twenty-four (24) months, any such stock shall not be considered as part of the assets of the state bank.

(c) The provisions of this section shall not apply to the payment by a state bank of the value of shares held by shareholders dissenting from any proposed merger, consolidation, purchase or assumption, or other reorganization involving a plan of exchange of any of the stock of the state bank, who perfect their statutory rights as dissenting shareholders.

23-47-103. Acquisition of bank premises.

(a) A state bank or subsidiary trust company, acting with the prior approval of the Commissioner, may acquire bank premises to be used, occupied, or owned by it.

(b)(1) Any state bank acting with the prior approval of the Commissioner may cause the title to its bank premises, now owned or at any time hereafter acquired by the bank to be held by a subsidiary corporation which shall be wholly owned by the bank.

(2) A state bank having such a subsidiary may rent the bank premises or any portion thereof from the subsidiary, or acquire the title to said premises by purchase from the subsidiary or through its liquidation, under such terms and conditions as may be approved by the Commissioner.

(c) A state bank may with the prior approval of the commissioner, invest in bank premises or in the stock, bonds, debentures, or other obligations of the subsidiary owning the bank premises, or make loans to, or upon the security of the stock of the subsidiary, if the aggregate of all such investments or loans, together with the amount of any indebtedness incurred by the subsidiary, will not exceed one hundred fifty percent (150%) of the capital base of such state bank.

23-47-104. Prohibition on engaging in business as real estate salesmen or brokers.

Banks, bank holding companies, and subsidiaries of banks or bank holding companies, may not engage in business as real estate salesmen or brokers.

SUBCHAPTER 2 - DEPOSITS

23-47-201. Notice of rules governing deposits.

(a) Banks shall have the power to make rules governing deposits, including provisions for reasonable notice, not to exceed ninety (90) days, for the withdrawal of deposits and for changes in or amendments to those rules to be made by the bank without approval of the depositor. Notice of the rules and all changes therein shall be given to each customer whose deposits are affected by such rules, either by delivery or mailing of a copy to such customer or by posting them in a conspicuous area in the main office and in all branch offices of the bank. If the rules are stated on a signature card or other document signed by the customer, the bank shall be deemed to have given notice of the rules for purposes of this provision even if such signature card or document is returned to the bank.

(b) Rules so made shall be a valid contract between the depositor and the bank, subject to the right of the bank to change or amend the rules in the manner provided in the rules.

23-47-202. Deposits by minors.

When any deposit is made in any bank by a minor, the bank may pay to the depositor the sums due him or her and the receipt or check of the minor shall be, in all respects, valid in law.

23-47-203. Securing of deposits.

(a) It shall be lawful for any state bank to secure deposits made with it by any of the following:

(1) The United States, the state of Arkansas, any county of this state, any municipality of this state, or any agency, corporate instrumentality, or political subdivision of any of the foregoing;

(2) Any university or college supported by this state;

(3) Any school district of this state;

(4) Any community college district of this state;

(5) Any relief body of the United States or of this state;

(6) Any road, drainage, levee, bridge, street, sewer, paving, or other improvement district organized under the laws of this state;

(7) Any regional water distribution district organized under the laws of this state;

(8) Any federal agency;

(9) The United States Postal Service;

(10) Any receiver of any state or federal court, whether appointed in proceedings pending in this state or elsewhere;

(11) Any referee in bankruptcy;

(12) Any receiver, trustee, or operating officials appointed by any federal court in any bankruptcy, debt-adjustment, or composition proceeding pending within this state or elsewhere;

(13) Any pension or retirement fund for employees of any county or municipality in this state or any agency, corporate instrumentality, or political subdivision of any of the foregoing; and

(14) The Treasurer of this state.

(b) It shall be lawful for any state bank to secure the deposit with it of the following described funds:

(1) Any funds deposited in the bank and which are held in trust by the bank, awaiting investment or distribution if not prohibited by the instrument or judgment creating the trust; and

(2) Any funds deposited for such other purposes as are approved by the Commissioner.

(c)(1) A state bank may secure the deposits described in subsections (a) and (b) of this section, subject to the depositor's discretion regarding the suitability of the collateral, by:

(A) The pledge or escrow of the assets of the bank consisting of any investment in which a state bank may invest, pursuant to 23-47-401;

(B) A surety bond issued by an insurance company licensed under the laws of the State of Arkansas and either:

(i) Rated "A" or better by any one (1) or more of the following rating agencies: A.M. Best Company, Inc., Standard & Poor's Insurance Rating Service, Moody's Investors Service, Inc. or Duff & Phelps Credit Rating Co.; or

(ii) Listed on the then current United States Department of the Treasury Listing of Approved Sureties;

(C) Private deposit insurance issued by an insurance company licensed under the laws of the State of Arkansas and either:

(i) Rated "A" or better by any one (1) or more of the following rating agencies: A.M. Best Company, Inc., Standard & Poor's Insurance Rating Service, Moody's Investors Service, Inc. or Duff & Phelps Credit Rating Co.; or

(ii) Listed on the then current United States Department of the Treasury Listing of Approved Sureties; or

(D) An irrevocable standby letter of credit issued by a Federal Home Loan Bank.

(2) The aggregate market value of assets pledged or escrowed or the face amount of the surety bond, private deposit insurance or letter of credit securing the deposit of funds by any single depositor must be equal to or exceed the amount of the deposit to be secured.

(d) Notwithstanding any other provision of this section, or the provision of any other law requiring security for deposit of funds in the form of the deposit or pledge of securities, security

for such deposits shall not be required to the extent that such deposits are insured under the provisions of the Federal Deposit Insurance Act.

(e) The powers herein conferred upon state banks are cumulative to such similar powers as they now may hold under existing laws.

23-47-204. Multiple-party deposits.

(a) As used in this section, "multiple-party deposit account" means a deposit account (i) established in the names of, (ii) payable to, or (iii) in form subject to withdrawal by two (2) or more natural persons.

(b)(1) When opening a multiple-party deposit account, or amending an existing deposit account so as to create a multiple-party deposit account, a bank shall utilize account documents which enable the depositor to designate ownership interest therein in terms substantially similar to one or more of the following:

(A) Joint tenants with right of survivorship;

(B) Tenants in common;

(C) Tenants by the entirety;

(D) Payable on death;

(E) "Totten" or tentative trust; and

(F) Such other deposit designation as may be acceptable to the bank.

(2) Account documents which enable the depositor to indicate the depositor's intent of the ownership interest in any multiple-party deposit account may include any of the following:

(A) The signature card;

(B) The deposit agreement;

(C) A certificate of deposit;

(D) A document confirming purchase of a certificate of deposit; or

(E) Such other document acceptable to the bank which indicates the intent of the depositor.

(3) The designation of ownership interest contained in account documents shall be conclusive evidence in any action or proceeding involving the deposit account of the intention of all depositors to vest title to the deposit account in the manner specified in the account documents.

(4) Nothing in this section shall be construed to require a bank to offer any particular type of multiple-party deposit account.

(c) Multiple-party deposit accounts which do not expressly designate ownership interest as tenants in common, payable on death, or "Totten" or tentative trust shall constitute (i) a joint tenant with right of survivorship deposit account, if the depositors have not indicated in the

account documents that the depositors are married to each other and (ii) a tenants by the entirety deposit account, if the depositors have indicated in the account documents that they are married to each other, whether or not they are at that time husband and wife.

(d)(1) A joint tenant with right of survivorship deposit account may be paid to or on the order of any one (1) of the depositors during their lifetime unless a contrary written designation, in form acceptable to the bank, is given to the bank, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them.

(2) A tenancy by the entirety deposit account may be paid to or on the order of either depositor during their lifetime, or to or on the order of the survivor after the death of one (1) of them.

(3)(A) A tenants in common deposit account may be paid, prior to the receipt by the bank of a specific written notice of death of a depositor, to or on the order of any one (1) depositor unless a contrary written designation in form acceptable to the bank, is given to the bank. Upon receipt of a specific written notice of death of a depositor in form acceptable to the bank, the respective pro rata parts of a tenants in common deposit account may be paid to or on the order of the surviving tenant in common, and to the estate of the deceased depositor.

(B) All tenants in common deposit accounts shall be deemed to be owned pro rata by the depositors unless a contrary written designation in form acceptable to the bank, is given to the bank.

(e) A payable on death deposit account is created when the depositor indicates on the account documents that, on the death of the person named as holder, the deposit account shall be paid to or held by another person. Upon the death of the person named as holder, the person designated by him and who have survived him shall be the owner of the deposit account and, if more than one (1) person shall be the owners of the deposit account, ownership shall be as joint tenants with right of survivorship. During the lifetime of the depositor, he may change the designation of the person who are to be the owner at his death by written direction in form acceptable to the bank.

(f) A “Totten” or tentative trust deposit account is created when the depositor indicates on the account document that he is the trustee for another person and there is no written trust agreement which affects the deposit account. Upon the death of the person named as trustee, the other person shall be the owner of the deposit account and, if more than one (1) person shall be the owners of the deposit account, ownership shall be as joint tenants with right of survivorship. During the lifetime of the person named as trustee, he may change the classification of the person he is trustee for, by written direction in form acceptable to the bank.

(g) A bank shall also pay partial withdrawal requests, accept pledges of a deposit account, and otherwise deal with the deposit account in the same manner it pays the deposit account pursuant to the provisions of this section.

(h) Any payment of a deposit account, acceptance of pledge of a deposit account, change in the form of a deposit account, or otherwise dealing with a deposit account by a bank in the manner provided by this section shall be a complete and valid release and discharge of the bank as to the amount paid or action taken. No bank shall have any liability whatsoever for the way in which the ownership interest of a deposit account is designated when it is opened or in which a deposit account is amended if the deposit account is opened or amended as the depositor specified in the account document.

(i) No bank making any payment in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due.

(j) The terms "written direction" and "written designation" shall not be construed to require that the depositor affix his signature to an instrument, unless the bank requires the signature of the depositor to the instrument.

23-47-205. Adverse claim to deposit.

Notice to a bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be sufficient to require the bank to pay the deposit to the adverse claimant, or otherwise recognize the adverse claim, unless the adverse claimant also:

(1) Procures a restraining order, injunction, or other appropriate process, which has become final and not further appealable, against the bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or

(2) Executes to the bank, in form and with sureties acceptable to it, a bond indemnifying the bank from any and all liability, loss, damage, costs, and expenses for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

23-47-206. Settlement of checks at par -- Exception.

No state bank shall settle any check drawn on it against an account with a sufficient balance otherwise than at par. However, the provisions of this section shall not apply with respect to the settlement of a check sent to a state bank for special handling or as a special collection item.

23-47-207. Payment of overdrafts -- Liability of officer or employee.

Any officer or employee who knowingly pays out the funds of any state bank upon the check, order, or draft of any individual, firm, corporation, or association which does not have on deposit with the bank a sum equal to the check, order, or draft is personally liable to it for the amount so paid unless the drawer of such check, order, or draft has previously arranged with the bank for a line of credit sufficient to cover the payment or unless the payment was made pursuant to a general authorization approved by the board of directors for the officer or employee to cover the payment. However, the board of directors may ratify the overdraft and relieve the employee from liability.

23-47-208. Deferred income investment accounts.

(a) On behalf of depositors, state banks may create and open deferred income investment accounts of the following types:

(1) The depositor makes a deposit of a lump sum, and the bank agrees to pay the depositor an agreed monthly or annual payment for life or for a term certain beginning immediately or at some time in the future;

(2) The depositor makes a deposit periodically on an agreed basis, and the bank agrees to pay the depositor, on a periodic basis beginning at some time in the future for life or a term certain, an agreed monthly or annual payment.

(b) The depositor and the state bank may agree that:

(1) A partial refund of the deposit may occur upon specified events, or no refund may occur;

(2) The depositor may elect to stop payments from the bank for a term;

(3) The payments may go to designated beneficiaries in all cases both before and after death of the depositor;

(4) The amount of the payments to the bank and to the depositor will be fixed for the term agreed upon; or

(5) The payment to the depositor will be determined by an index or criteria beyond the control of the depositor or bank.

(c) The Commissioner shall promulgate such rules and regulations as may be necessary and proper to carry out the intent and purpose of this section and to issue cease and desist orders to any state bank found to be violating this section or the Department regulations. These Department regulations shall incorporate §§ 23-81-121 -- 23-81-128, where applicable.

(d) The deferred income investment accounts allowed in this section shall be exempt from §§ 23-42-501 and 23-42-502.

(e) It is the intent of this section that distributions from deferred income investment accounts be treated as nontaxable to the greatest extent possible under Section 72 of the Internal Revenue Code of 1986.

SUBCHAPTER 3 – AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT

23-47-301. Definitions.

In this part:

(1) "Account" means a contract of deposit between a depositor and a bank, and includes a checking account, savings account and certificate of deposit;

(2) "Agent" means a person authorized to make account transactions for a party;

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after the death of all parties or for whom a party is named as trustee;

(4) "Devisee" means any person designated in a will to receive a testamentary disposition of real or personal property;

(5) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent;

(6) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge; and

(7) "Personal representative" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

23-47-302. Scope of subchapter.

(a) This subchapter applies to accounts in this state.

(b) This subchapter does not apply to:

(1) An account established for a partnership, joint venture, or other organization for a business purpose;

(2) An account controlled by one (1) or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) A fiduciary or trust account in which the relationship is established other than by the terms of the account.

23-47-303. Forms.

A contract of deposit that substantially contains the following form establishes an agency account, and the account is governed by the provisions of this subchapter applicable to agency accounts:

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries. [To Add Agency Designation To Account, Name One Or More Agents].

_____ _____

[Select One and Initial]:

___AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

___AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

23-47-304. Designation of agent.

(a) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(b) Death of the sole party or last surviving party terminates the authority of an agent.

(c) An agent in an account with an agency designation has no beneficial right to sums on deposit.

23-47-305. Payment to designated agent.

On request of an agent under an agency designation for an account, a bank may, unless it actually knows that the authority of agency has terminated, pay to the agent sums on deposit in the account.

23-47-306. Payment to minor.

If a bank is required or permitted to make payment pursuant to this subchapter to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act, § 9-26-201 et seq.

23-47-307. Discharge.

(a) Payment made pursuant to this subchapter in accordance with an agency account discharges the bank from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a bank has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the agency account should not be permitted and the bank has had a reasonable opportunity to act on it when payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the bank is to be protected under this section. Unless a bank has been served with process in an action or proceeding, no other notice or other information shown to have been available to the bank affects its right to protection under this section.

(c) A bank that receives written notice pursuant to this section or otherwise that has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the agency account.

(d) Protection of a bank under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in agency accounts or payments made from agency accounts.

23-47-308. Setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a bank, the bank has a right to setoff against the agency account. The amount of the agency account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled or, in the absence of proof of that proportion, an equal share with all parties.

23-47-309. Effect on other laws.

This subchapter is supplemental to all laws pertaining to the deposit of funds in banks.

SUBCHAPTER 4 - INVESTMENTS

23-47-401. Investment powers and limitations.

(a) A state bank may invest its funds without limitation in the following:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions thereof;

(6) Obligations issued by the State Board of Education under authority of the State Constitution or applicable statutes;

(7) Warrants of political subdivisions of the state of Arkansas and municipalities thereof having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that any such repurchase agreement shall provide for the taking of delivery of such collateral, either directly or through an authorized custodian;

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a “money market fund” under 17 CFR § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and

to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.

(b) A state bank may invest no more than twenty percent (20%) of its capital base in any single investment of the following types:

(1) Corporate debt obligations (including commercial paper) of any corporation that is not an affiliate or subsidiary of the bank;

(2) Revenue bond issues of any state of the United States or any municipality or any political subdivision thereof;

(3) Industrial development bonds for corporate obligors issued through any state of the United States or any political subdivision thereof;

(4) Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take the delivery of such collateral either directly or through an authorized custodian;

(5) Securities or other interests issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Asian Development Bank or the African Development Bank;

(6) Uninsured demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia.

(c) Subject to such additional restrictions and limitations as may be imposed by the Commissioner, a state bank may invest in any other investment securities which are not described in subsections (a) or (b) hereof to the extent that such investment securities are authorized for national banks.

(d) A state bank may invest in any investment not described in subsections (a) and (b) hereof as may be authorized by Department regulations.

SUBCHAPTER 5 - LOANS

23-47-501. Loan limits -- Maximum generally.

(a) The total indebtedness to any state bank of any person shall at no time exceed twenty percent (20%) of the capital base of the bank.

(b)(1) Obligations of a person as endorser or guarantor, accommodation or otherwise, of notes or other obligations shall be included in that person's loan limit.

(2)(A) However, in the case of endorsed or guaranteed obligations on consumer loans, if the financial responsibility of the primary debtor is reasonably adequate, and if an officer of the state bank designated by the board of directors for that purpose certifies in writing that the liability of the primary debtor has been evaluated and that the bank is relying primarily on such primary debtor for payment, the twenty percent (20%) limitation shall be applied to each primary debtor but not to the liability, in such capacity, of the endorser or guarantor;

(B) "Consumer loans" for the purpose of this section shall be considered to be credit extended to a natural person in which the money is to be used primarily for personal, family, or household purposes.

(c) A loan or group of loans that are within the legal loan limit of a state bank at the time the loan or loans are made shall be valid for legal loan limit purposes until maturity, as stated in the original contract, regardless of fluctuations in the bank's legal loan limit; provided, however, that if a bank's legal loan limit is reduced due to fluctuations in its capital base, a loan or group of loans to a borrower or borrowers that were within the legal loan limit prior to the reduction may become in violation of the bank's reduced legal loan limit upon the extension, renewal or advancement of additional funds on such loan or group of loans occurring after the reduction in the bank's legal loan limits. State banks are required to calculate their legal loan limits on a quarterly basis to coincide with the requirement to calculate their capital base.

(d)(1) If in any instance it shall appear, as determined by the Commissioner, that the interests of a group composed of individuals, partnerships, unincorporated associations, or corporations are so interrelated that, from a credit standpoint, applying standard and customary banking practice, they should be considered as a single unit for the purposes of extensions of credit, the total indebtedness of these interrelated customers shall be combined and treated as the indebtedness of a single customer in applying the loan limit.

(2) A state bank shall not be deemed to have violated this section solely by reason of the fact that the indebtedness of a group held by the bank exceeds the limitation of this section at the time the Commissioner determines that the indebtedness of the group must be combined. However, the state bank shall, if required by the Commissioner, dispose of indebtedness of the

group in the amount of excess of the limitation of this section within such reasonable time as shall be fixed by the Commissioner.

23-47-502. Loan limits -- Inclusions and exceptions.

(a) The following loans and other forms of indebtedness shall not be included in the limitation of twenty percent (20%) imposed by 23-47-501 and may be made or acquired without being subject to any loan limit:

(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

(2) Nonconforming assets acquired as a result of acquisition of a failed bank or savings and loan association, so long as a plan for divestiture within a reasonable amount of time is approved by the Commissioner;

(3) Obligations drawn in good faith against actually existing values and fully secured by goods or commodities in process of shipment may be acquired without limit;

(4) Obligations in the form of banker's acceptances of other banks;

(5) Obligations secured by investments which the state bank, pursuant to 23-47-401 could invest in without limit, having a market value at all times at least equal to the principal balance of the obligation.

(b)(1) The loan limit of twenty percent (20%) provided by 23-47-501 shall be modified so that a loan limit not to exceed sixty percent (60%) shall apply to obligations secured by transferable documents of title covering:

(A) Livestock; or

(B) Readily marketable and nonperishable commodities or staples fully insured, if of a type that is customarily insured.

(2) The property in each instance must have a value of at least one hundred fifteen percent (115%) of the amount of the secured obligation.

(3) An obligation secured in this manner shall not be deemed non-conforming on the grounds that, for the purpose of loading, unloading, storing, shipping, or transshipping, such title documents or the property covered thereby may be released under trust receipt to the possession of the obligor or borrower if, within twenty-one (21) days after such release, the property or valid title documents covering the property is redelivered to the state bank, and provided that, during such interim, the bank holds a perfected security interest in all such property under the Uniform Commercial Code, § 4-1-101 et seq.

(4) The standard twenty percent (20%) loan limit will apply even to the obligations secured by transferable documents of title if the warehouseman who issued the documents of title

under applicable law can transfer marketable title to the commodities described in the documents to a purchaser in the ordinary course of business.

23-47-503. Loans involving stock of state bank.

(a) It shall be unlawful for any state bank to knowingly:

(1) Loan its funds to its stockholders on its own stock, or stock in its bank holding company, as collateral security;

(2) Make any loan, the proceeds of which are used to purchase its own stock or stock of its bank holding company; or

(3) Carry as an asset any loan representing, either directly or indirectly, an investment in its own stock or that of its bank holding company; provided, however, that there shall be no violation of this subsection (3) where a bank acquires its own stock or stock in its bank holding company in the regular course of collecting a debt previously contracted in good faith if the bank complied with subsections (1) and (2) hereof at the time the loan was made and if the bank divests the stock within two (2) years.

(b) Any officer or director of any state bank or any stockholder violating the provisions of this section shall be subject to civil money penalties of one thousand dollars ($1,000) per day, up to a maximum of one hundred thousand dollars ($100,000) in the aggregate, for each such violation. The civil penalties may be imposed by the Commissioner pursuant to his power to and the procedure for issuing cease and desist orders.

23-47-504. Loans to affiliates and insiders.

The provisions of subsections (g) and (h) of Section 22 of the Federal Reserve Act, 12 U.S.C. §§ 375a and 375b, and the regulations promulgated thereunder, shall apply to any state bank.

23-47-505. Illegal loans -- Liability of officer or director.

Any officer or director of any state bank who shall knowingly make or approve a loan in violation of 23-47-501 through 23-47-504 or who shall knowingly permit such a loan to be made, or who shall fail to exercise his authority to prevent the making of such loan shall be personally liable to the bank, or to the Commissioner, for the full amount thereof. However, written notice of disapproval of the loan, served on the board of directors and also the Commissioner at the time the making or existence of the loan first comes to his knowledge, shall relieve any officer or director from personal liability.

23-47-506. Sale of certain mortgage loans.

Notwithstanding any other provision of law, any state bank which has as one (1) of its principal purposes the making or purchasing of loans secured by real estate mortgages is authorized to:

(1) Sell such mortgage loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or any other corporation chartered by an act of Congress for such purposes, or any successor thereof;

(2) In connection therewith, make payments of any capital contributions required pursuant to law in the nature of subscriptions for stock of the entities described in subsection (1) of this section;

(3) Receive stock evidencing such capital contributions; and

(4) Hold or dispose of such stock.

23-47-507. Power to hold and sell collateral.

A state bank may hold and sell all kinds of property that may come into its possession as collateral security for loans or any ordinary collection of debts, in the manner provided by law. Any personal property coming into its possession in this manner and which is not otherwise authorized for state banks to own as an asset shall be disposed of as soon as possible and after twelve (12) months from the date of acquisition shall cease to be considered as a part of its assets.

23-47-508. Disposition of real estate acquired through debt collection.

(a) Except as provided in subsection (b) of this section, real estate acquired through the collection of debts previously contracted in the ordinary course of business shall not be held by the state bank as an asset for a longer period than five (5) years.

(b) The Bank Commissioner is authorized to grant an extension of the holding period not to exceed five (5) additional years or for shorter periods as circumstances warrant, based upon his discretion.

(c) Real estate held pursuant to this section shall be considered an asset of the bank. The value of the asset shall be based upon fair market value supported by an appraisal or appropriate evaluation when the bank acquires ownership of the property or as established by regulation of the Bank Commissioner.

23-47-509. Loans to minors.

Whenever a minor borrows money from a bank for the purpose of defraying the expenses of his higher education or for necessaries, any contract, promissory note, loan agreement, or

other loan instrument entered into by and between the bank and the minor shall constitute a valid contract between the bank and the minor and shall be binding upon the minor with like effect as if he were of full age and legal capacity.

23-47-510. Casualty insurance -- Replacement cost coverage.

(a) A state bank, when making a mortgage loan, may not require, as a condition or term of the mortgage, that the mortgagor purchase casualty insurance on property which is the subject of the mortgage in an amount in excess of the fair market value of the buildings or appurtenances on the mortgaged premises.

(b) This section shall not be construed as limiting the right of the mortgagor to purchase replacement cost coverage on the property which is the subject of the mortgage.

SUBCHAPTER 6 - SUBSIDIARIES

23-47-601. Operating subsidiaries.

(a) With the prior approval of the commissioner, and subject to such conditions as may be prescribed by him, a state bank may engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary and other activities permissible for state banks or their subsidiaries under the statutory authority or as authorized by regulations of the State Banking Board. For purposes of this section, an operating subsidiary in which a state bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than fifty percent (50%) of the voting, or similar type of controlling, interest of the subsidiary; or the parent bank otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting, or similar type of controlling interest of the subsidiary. Subsidiaries which are not subject ot this section are:

(1) A subsidiary in which the state bank's investment is made and limited pursuant to specific authorization in a statute or by regulation:

(2) A subsidiary, in which the state bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid loss in connection with a debt previously contracted.

(b) The total of each state bank's loans and investments in any single operating subsidiary and the total of each state bank's loans and investments in all subsidiaries and bank service companies, will be considered by the commissioner and may be limited, according to the commissioner's discretion, for safety and soundness purposes.

23-47-602. Real estate subsidiaries.

(a) A state bank acting through an operating subsidiary or a bank holding company acting, directly or through a subsidiary, may, with the prior approval of the commissioner, engage in real estate investment and development, including without limitation:

(1) Development of subdivisions or additions;

(2) Construction of improvements;

(3) Acquisition of stock or equity interests in any entity created primarily for the purpose of owning and developing real estate, including those activities authorized for community development corporations pursuant to 23-47-605; and

(4) Any other activities necessary and proper in connection with real estate investment and development.

(b) A state bank's investment in real estate and in real estate subsidiaries (excluding its bank premises) shall not exceed one hundred fifty percent (150%) of its capital base.

(c) A state bank acting through an operating subsidiary or a bank holding company acting directly or through a subsidiary may carry out any one (1) or more of the purposes, activities, and objectives set forth in this section as principal, factor, agent, or otherwise, either alone, through or in conjunction with any person, including the performance and carrying out of the purposes and objects herein enumerated as a member of a partnership or joint venture.

(d) Loans to an operating subsidiary engaged in real estate investment and development that are fully secured by securities that the state bank could invest in without limitation pursuant to § 23-47-401 shall not be subject to the limitations of this subsection.

23-47-603. Bank service companies.

(a) As used in this section, unless the context otherwise requires:

(1) "Bank service company" means a corporation or limited liability company organized for the exclusive purpose of performing bank services for one (1) or more persons, which is owned by one (1) or more state banks and one (1) or more persons.

(2) "Bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a person; or any other activities authorized by the Commissioner.

(b) With the prior approval of the Commissioner and subject to such conditions as may be prescribed by him, a state bank may establish, create, or invest in a bank service company to furnish bank services to owners of the bank service company and other persons. The total of a state bank's loans to and investments in a bank service company shall not exceed twenty percent (20%) of the bank's capital base.

(c) When a state bank becomes the sole owner of a bank service company, it shall become an operating subsidiary of the bank and be governed by 23-47-601.

23-47-604. Capital development corporations.

(a) State banks shall have the power to acquire and own on their own behalf stock or equity interests issued by a capital development corporation, or make loans to a capital development corporation. No state bank shall invest in or lend to the capital development corporation more than twenty percent (20%) of the bank's capital base.

(b) Any investment in stock or equity interest made pursuant to this section shall not be revalued or classified by the Commissioner solely because of the failure of a capital development corporation to pay dividends or distributions of equity to the investors.

23-47-605. Community development corporations.

A state bank may make investments designed primarily to promote the public welfare, either directly or by purchasing interests in an entity primarily engaged in making such investments. As used herein, the term "public welfare" shall mean developing housing, fostering economic growth and revitalization, creating small businesses, including minority-owned businesses, and supporting other community development initiatives approved by the Commissioner. A state bank shall not make any such investment if the investment would expose the bank to unlimited liability. The Commissioner may limit a state bank's investments in any one (1) project and a bank's aggregate investments under this section. In no case shall a state bank's aggregate investments under this section exceed ten percent (10%) of the bank's capital base.

23-47-606. Small business investment companies.

A state bank may purchase up to one hundred percent (100%) of the capital stock of small business investment companies and minority enterprise small business investment companies as defined by the Small Business Act of 1958, as amended. However, in no event may any state bank acquire shares of any small business investment company or minority enterprise small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies or minority enterprise small business investment companies then held by the bank would exceed ten percent (10%) of the bank's capital base.

23-47-607. Investment in stock of certain banks authorized to do foreign banking.

Any state bank may purchase up to one hundred percent (100%) of the capital stock of any corporation organized and existing under the Edge Act, and any amendments thereto. However, in no event may any state bank acquire shares of any such corporation if, upon the making of that acquisition, the aggregate amount of shares of all corporations organized and existing under the Edge Act then held by the bank would exceed ten percent (10%) of the bank's capital base.

23-47-608. Activities through financial subsidiaries.

With prior notice to the Bank Commissioner and in accordance with the state and federal law, state banks are authorized to engage in activities through financial subsidiaries.

SUBCHAPTER 7 – TRUST POWERS

23-47-701. Authority of the Commissioner.

The Commissioner shall be authorized and empowered to grant to state banks applying therefore the right to operate a trust department to act as trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which national banks, subsidiary trust companies, national trust companies or other corporations which come into competition with state banks are permitted to act.

23-47-702. Considerations determinative of grant or denial of applications.

In determining whether to grant an application by a state bank for permission to operate a trust department to exercise the powers enumerated in this part, the Commissioner may take into consideration the sufficiency of the capital base of the applying state bank, the needs of the community to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly.

23-47-703. Grant and exercise of powers deemed not in contravention of Arkansas law.

The granting and exercise of such powers as are authorized by this subchapter shall not be deemed to be in contravention of any other provision of Arkansas law.

23-47-704. Segregation of fiduciary and general assets -- Separate books and records.

State banks exercising any or all of the powers enumerated in this subchapter shall segregate all assets held in its trust department from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this part.

23-47-705. Prohibited operations -- Separate investment account -- Collateral for certain funds used in conduct of business -- Lien and claim upon state bank failure.

(a) No state bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the state bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall secure the funds deposited or held in trust with investments in which a state bank may invest without limitation pursuant to 23-47-401. No security shall be required to the extent the

funds so deposited or held in trust are insured under the provisions of the Federal Deposit Insurance Act.

(b) In the event of the failure of such state bank the owners of the funds held in trust for investment shall have a first priority lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

23-47-706. Officials' oath or affidavit.

In any case in which Arkansas law requires that a corporation acting as trustee, executor, administrator, or in any capacity specified in this part, shall take an oath or make an affidavit, the president, a vice president or a trust officer of a state bank may take the necessary oath or execute the necessary affidavit.

23-47-707. Loans of trust funds to officers and employees prohibited -- Penalties.

It shall be unlawful for any state bank to lend to any officer, director, or employee any funds held in trust under the powers conferred by this part, or to sell assets held in trust to any such persons, without the prior written approval of the Commissioner. In the absence of such prior written approval of the Commissioner, any officer, director, or employee making such loan or sale, or to whom such loan or sale is made is guilty of a class D felony.

23-47-708. Surrender of authorization -- Board resolution -- Commissioner certification -- Activities affected.

(a) Any state bank desiring to surrender its right to operate a trust department and to exercise the powers granted under this part, in order to relieve itself of the necessity of complying with the requirements of this part, or to have returned to it any securities which it may have deposited with the state and local authorities for the protection of private or court trusts, or for any other purpose, may file with the Commissioner a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Commissioner, after satisfying himself that such bank has been relieved in accordance with Arkansas law of all duties as trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks or bonds, guardian of estates, assignee, receiver, or other fiduciary, under court, private, or other appointments previously accepted under authority of this subchapter may, in his discretion, issue to such bank a certificate certifying that such bank is no longer authorized to operate a trust department and exercise the powers granted by this part.

(b) Upon the issuance of a certificate by the Commissioner certifying that a state bank is no longer authorized to operate a trust department, the bank:

(1) Shall no longer operate a trust department or be subject to the provisions of this subchapter or Department regulations made pursuant thereto;

(2) Shall be entitled to have returned to it any securities which it may have deposited with state or local authorities for the protection of private or court trusts; and

(3) Shall not operate a trust department or exercise thereafter any of the powers granted by this subchapter without first applying for and obtaining a new permit to operate a trust department to exercise such powers pursuant to the provisions of this subchapter.

23-47-709. Revocation -- Procedures available.

(a) In addition to the authority conferred by any other law, if, in the opinion of the Commissioner, a state bank is unlawfully or unsoundly operating a trust department or exercising, or has unlawfully or unsoundly operated or exercised, or has failed for a period of five (5) consecutive years to operate a trust department or exercise the powers granted by this part, or otherwise fails or has failed to comply with the requirements of this part, the Commissioner may issue and serve upon the bank a notice of intent to revoke the authority of the bank to operate its trust department and exercise the powers granted by this part. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound operation or exercise of powers, or failure to operate or exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking the authority to exercise such powers should issue against the bank.

(b) Such hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, § 25-15-201, et seq., and shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after service of such notice unless an earlier or later date is set by the Commissioner at the request of any state bank so served.

(c) Unless the state bank so served shall appear at the hearing by an authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Commissioner shall find that any allegation specified in the notice of charges has been established, the Commissioner may issue and serve upon the state bank an order prohibiting it from accepting any new or additional trust accounts and revoking authority to operate its trust department and exercise any and all powers granted by this part, except that such order shall permit the bank to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(d) A revocation order shall become effective not earlier than the expiration of thirty (30) days after service of such order upon the state bank so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall

remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Commissioner or a reviewing court.

23-47-710. Services provided by affiliates.

Any bank, subsidiary trust company or national trust company qualified to act as a fiduciary in this state, is hereby specifically authorized to utilize its respective affiliates to provide services for any trust or estate for which the bank, subsidiary trust company or national trust company acts as a trustee or other fiduciary, provided the bank, subsidiary trust company or national trust company believes, in the exercise of the standard of care described in § 28-71-105, that the services are reasonably necessary and that its affiliate can render such services, including, but not limited to, securities brokerage services, computer services, and banking services, to the trust or estate as competently as similar services rendered by nonaffiliates and for compensation equal to or less than that charged by nonaffiliates. Provided the foregoing requirements are met, an affiliate may be utilized by the bank, subsidiary trust company or national trust company without the approval or consent of any person or specific authorization in the trust instrument, unless such power is expressly withheld in the trust instrument.

SUBCHAPTER 8 – SUBSIDIARY TRUST COMPANIES

23-47-801. Definitions.

For purposes of this subchapter, "affiliated bank" means a bank, having authority to conduct trust business and business incidental to trust business within this state, more than fifty percent (50%) of the voting stock of which is owned directly or indirectly by:

(1) The same bank holding company that owns, directly or indirectly, more than fifty percent (50%) of the voting stock of a subsidiary trust company or national trust company; or

(2) The same five (5) or fewer persons who are individuals, estates, or trusts that own directly or indirectly more than fifty percent (50%) of the voting stock of the bank holding company described in subdivision (1) of this section, taking into account the stock ownership of each such person only to the extent such ownership is identical with respect to each of the bank and the bank holding company.

23-47-802. Creation, formation, etc. -- Powers -- Location.

(a) Notwithstanding the provisions of 23-48-405, bank holding companies that own, directly or indirectly, an affiliated bank are authorized and empowered by the provisions of this subchapter to apply to the Commissioner for authority to:

(1) Create, form, and establish subsidiary trust companies under this subchapter for the purpose of combining the trust operations of their affiliated banks into a single trust operation; and

(2) Create, form, and establish national trust companies under the laws of the United States.

(b) In determining whether to grant an application for permission to establish a subsidiary trust company, the Commissioner shall take into consideration the sufficiency of the capital base of the applying bank holding company, the needs of the communities to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly.

(c) The subsidiary trust company shall be formed as a business corporation under the Arkansas Business Corporation Act, § 4-27-101, et seq. The newly formed subsidiary trust company shall only have the ability to conduct trust business that could be conducted by the individual trust departments combined from the affiliated banks to create the subsidiary trust company.

(d) Offices of a subsidiary trust company may be located only in:

(1) Communities where its affiliated banks are located or in communities where their branches are or could be located; or

(2) Communities where it would be authorized to have an office if it were a national trust company.

(e) A subsidiary trust company shall be fully subject to the provisions of Chapter 50 of this title.

23-47-803. Substitution of subsidiary trust company or national trust company for affiliated bank.

(a) A subsidiary trust company or national trust company and one (1) or more of its affiliated banks may enter into one (1) or more agreements under which the subsidiary trust company or national trust company is substituted as fiduciary for each affiliated bank in each fiduciary account listed in the agreement. The agreement shall be filed with the Commissioner before the effective date of the substitution and must include:

(1) A list of each fiduciary account for which substitution is requested; and

(2) The effective date of the substitution, which may not be less than ninety (90) days after the date of the agreement.

(b) Not later than ninety (90) days before the effective date of a substitution under this section, the parties to the substitution agreement shall send written notice of the substitution to the following:

(1) Each person who is readily ascertainable as a beneficiary of the account because of the receipt of statements of account by the person, or in the case of a minor beneficiary, by a parent, conservator, or guardian of the minor beneficiary;

(2) Each cofiduciary;

(3) Each surviving settlor of a trust;

(4) Each issuer of a security for which the affiliated bank administers a fiduciary account;

(5) The plan sponsor of each employee benefit plan;

(6) The principal of each agency account; and

(7) The guardian of the person of each ward under guardianship.

(c) The notice must be sent by United States mail to the person's current address as shown on the fiduciary records. If the fiduciary has no address for the person on its records, the fiduciary shall make a reasonable attempt to ascertain the person's current address. The notice must disclose the person's rights with respect to objecting to the transfer of the fiduciary account and the liability of the existing fiduciary and the substitute fiduciary for their actions. Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice does not impair the validity or effect of substitution. If a substitution of a subsidiary trust company is ineffective because of a defect in the required notice, the actions taken by the subsidiary trust company before the determination of the invalidity of the substitution are valid if the actions would have been valid if performed by the affiliated bank.

(d) Except as provided by this subsection, the prospective designation in a will or other instrument of the affiliated bank as fiduciary is considered designation of the subsidiary trust company or national trust company, and any grant in the will or other instrument of any discretionary power is considered conferred on the subsidiary trust company or national trust company. However, the affiliated bank and subsidiary trust company or national trust company may agree in writing to have the designation of the affiliated bank as fiduciary be binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this part.

(e) Substitution under this section is effective for all purposes on the effective date stated in the agreement between the subsidiary trust company or national trust company and the affiliated bank, unless, not later than fifteen (15) days before the effective date, a party entitled to notice of the substitution under subsection (b) of this section files a written petition in a court of competent jurisdiction seeking to have the substitution denied under 23-47-804 and provides the affiliated bank with a copy of the filed petition.

(f) If a petition is filed and notice is given under subsection (e) of this section, the substitution takes effect when the petition is withdrawn or dismissed or when the court enters a final order denying the relief sought.

(g) On the effective date, the subsidiary trust company or national trust company succeeds to all right, title, and interest in all property that the affiliated bank holds as fiduciary, except property held for accounts for which there has been no substitution under this part, without the necessity of any instrument of transfer or conveyance, and the subsidiary trust company or national trust company shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and obligations and exercise all the powers and authority connected with or incidental to that fiduciary capacity in the same manner as if the subsidiary trust company or national trust company had been originally named or designated fiduciary. However, the affiliated bank is responsible and liable for all actions taken by it while it acted as fiduciary.

23-47-804. Removal of accounts from operation of substitution agreement -- Denial of substitution.

(a) A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the Commissioner before the effective date stated in the agreement.

(b) The substitution of a subsidiary trust company or national trust company as fiduciary of an account may be denied if the court having jurisdiction, on notice and hearing, determines that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account.

(c) Subsection (b) of this section is cumulative to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary under Arkansas law or in the instrument creating the fiduciary relationship.

(d) In any proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

23-47-805. Deposits.

(a) A subsidiary trust company or national trust company may deposit with an affiliated bank fiduciary funds that are being held pending investment, distribution, or payment of debts.

(b) A subsidiary trust company or national trust company may deposit with an affiliated bank fiduciary funds as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust.

23-47-806. Responsibility for acts and omissions.

(a) The bank holding company owning a subsidiary trust company or national trust company shall file with the Commissioner an irrevocable undertaking to be fully responsible for the existing and future fiduciary acts and omissions of its subsidiary trust company or national trust company.

(b) If an affiliated bank has given bond to secure performance of its duties and the subsidiary trust company or national trust company qualifies as successor fiduciary, the subsidiary trust company or national trust company shall give bond to secure performance of its duties in the same manner.

23-47-807. Qualification as successor fiduciary.

For the purposes of qualification as successor fiduciary under any requirements contained in any document creating a fiduciary account or any statute of this state relating to fiduciary accounts, the subsidiary trust company or national trust company:

(1) Is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank holding company; and

(2) Shall be treated as a national bank, unless:

(A) It is not a national bank under federal law relating to national banks; and

(B) It has not entered into a substitution agreement with an affiliated bank that is a national bank under federal law relating to national banks.

SUBCHAPTER 9 – SAFE DEPOSIT FACILITIES

23-47-901. Safe deposit facilities -- Liability of lessor.

A bank may lease safe deposit boxes for the keeping of property on such terms as may be agreed by the parties. No bank shall be liable for any loss of the property in a safe-deposit box by theft, robbery, fire or other cause.

23-47-902. Multiple-party leases.

(a) If a safe deposit box is held in the name of two (2) or more persons, any one (1) of such persons shall be entitled to access the safe-deposit box and shall be permitted to remove the contents thereof, and the bank shall not be responsible for any damage arising by reason of such access or removal by one (1) of said persons.

(b) The death of one (1) holder of a safe deposit box held in the name of two (2) or more persons does not affect the right of any other holder of the safe deposit box to have access to and remove contents from the safe deposit box.

23-47-903. Lease to a minor.

A bank may lease a safe deposit box to a minor, and, in connection therewith, deal with him to the same effect as if leasing to and dealing with a person of full legal capacity.

23-47-904. Limiting right of access for failure to comply with security procedures.

If any lessee is unwilling or unable to comply with any of the bank's normal requirements or procedures in connection with access to a safe deposit box relating to security, safety, or protection, the bank has the right to limit or deny access to the safe deposit box by that lessee unless all lessees of such safe deposit box take such action as is necessary to ensure reasonable compliance with such security, safety, or protection requirements or procedures.

23-47-905. Adverse claims to contents of safe deposit box.

Notice to a bank of an adverse claim to the contents of a safe deposit box shall not be sufficient to require the bank to deny access to its lessee unless the adverse claimant also procures a restraining order, injunction, or other process, which has become final and not further appealable, issued in an action by a court of competent jurisdiction in which the lessee is served with process and named as a party.

23-47-906. Remedies and procedures for nonpayment of rent.

(a) If the safe deposit box rental is delinquent for six (6) months, the bank, after at least thirty (30) days' notice by certified mail, return receipt requested, addressed to the lessee at the lessee's last known address on the books of the bank, may, if the rent is not paid within the time specified in said notice, open the safe deposit box in the presence of a notary public and two (2) employees, at least one (1) of whom is an officer of the bank.

(b) The bank shall inventory the contents of the safe deposit box in detail and place the contents of the safe deposit box in a sealed envelope or container bearing the name of the lessee.

(c) The bank shall hold the contents of the safe deposit box subject to a lien for its rental, the cost of opening the safe deposit box, and the damages in connection therewith. If such rental, cost, damages, and any other lawful charges for the use of the safe deposit box or the holding of the contents thereof are not paid within two (2) years from the date of opening of the safe deposit box, the bank may sell at that time (or at any time prior to seven (7) years from the date the safe deposit box lease expired) any part or all of the contents at public auction in like manner and upon like notice as is prescribed for the sale of real property under mortgage or deed of trust. Any unauctioned contents of safe deposit boxes and any excess proceeds from such sale shall be remitted to the Auditor of State under the procedures prescribed by § 18-28-201 et seq.

CHAPTER 48
ORGANIZATION AND OPERATION
SUBCHAPTER 1 – GENERAL PROVISIONS

23-48-101. Banks subject to gross receipts and compensating use taxes.

All banks shall be subject to the Arkansas Gross Receipts Act, § 26-52-101 et seq., and the Arkansas Compensating Tax Act, § 26-53-101 et seq.

23-48-102. Trust companies no longer subject to banking laws.

All trust companies, other than national trust companies and subsidiary trust companies, in existence on May 30, 1997, must cease operations as a trust company. Trust companies, other than subsidiary trust companies and national trust companies, which have not become banks by the effective date of this act by complying with the provisions of law for the formation of a bank, shall no longer act as or be authorized to act as a fiduciary, nor shall they be subject to laws governing banks or trust companies, or exercise or be authorized to exercise any powers granted banks or trust companies by such laws, but instead will automatically become business corporations and be subject to the Arkansas Business Corporation Act of 1987, § 4-27-101, et seq., and the Commissioner shall deliver certified copies of the articles of incorporation, all amendments thereto, and all other corporate filings of those trust companies to the Secretary of State for inclusion in his official records of filings of business corporations.

23-48-103. Bank holidays.

(a)(1) Any bank, subsidiary trust company or national trust company doing business in this state may close its office for the transaction of business upon any day which has been or may hereafter be set apart or designated under the laws of this state or of the United States as a legal holiday.

(2) All acts omitted or done by any bank, subsidiary trust company or national trust company upon any such day shall have the same consequence and effect as if omitted or done upon the next succeeding business day.

(b)(1) Any bank, subsidiary trust company or national trust company transacting business in the State of Arkansas may close on any one (1) business day of each week.

(2) Any day upon which a bank, subsidiary trust company or national trust company may elect to close shall, with respect to such institution, be deemed a holiday for all purposes and not a business day.

(3) All acts omitted or done by a bank, subsidiary trust company or national trust company upon any such day shall have the same consequence and effect as if omitted or done upon the next succeeding business day.

(c) Any act authorized, required, or permitted to be performed at or with respect to any such bank, subsidiary trust company or national trust company on the days closed may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay.

23-48-104. Dealings with agents, fiduciaries, etc.

A bank dealing, whether to its own benefit or otherwise, with, through, or under any person who is or may be an officer, employee, member, agent, trustee, representative or other fiduciary of another person, shall not be deemed to have notice of nor be obligated to inquire as to any lack of or limitation upon the power of such person solely by reason either of:

(1) The fact that the person has executed in his representative capacity and is himself the payee or endorsee of any check, bill, note, or other promise or order; or

(2) The use of descriptive words in connection with his deposit account or accounts, any transfer, certificate, or memorandum thereof, or in connection with any signature or endorsement of the person.

23-48-105. Agents for affiliate.

(a)(1) As used in this section, “institution” means a bank, savings and loan association, or savings bank organized under the laws of any state or the United States.

(2) For the purpose of determining what constitutes an affiliated institution in this section, “control,” as it pertains to the definition of “affiliate,” has the meaning set forth in § 2(a)(2) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841.

(b) Any state bank may, upon compliance with the requirements of this section, agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, perform such other services as may receive the prior approval of the Commissioner, and act as an agent for any affiliated institution.

(c) A state bank that proposes to enter into an agency agreement under this section shall, prior to entering into such agreement, file with the Commissioner:

(1) A notice of intention to enter into an agency agreement with an affiliated institution;

(2) A description of the services proposed to be performed under the agency agreement; and

(3) A copy of the agency agreement.

(d)(1) If any proposed service is not specifically designated in subsection (b) of this section, and has not previously been approved in a Department regulation, the Commissioner shall decide whether to approve the offering of such service after receipt of the notice required in subsection (c) of this section.

(2) In deciding whether to approve any proposed service that is not specifically designated in subsection (b) of this section, the Commissioner shall consider whether such service would be consistent with applicable federal and state law and the safety and soundness of the principal and agent institutions.

(e) A state bank may not under an agency agreement:

(1) Conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) Have an agent conduct any activity that the state bank, as principal, would be prohibited from conducting under applicable state or federal law.

(f) The Commissioner may order a state bank or any other institution subject to the Commissioner's enforcement powers to cease acting as an agent or principal under any agency agreement that the Commissioner finds to be inconsistent with safe and sound banking practices.

(g) Notwithstanding any other provision of the law of this state, a state bank acting as an agent for an affiliated institution in accordance with this section shall not be considered to be a branch of that institution.

23-48-106. Exemption from posting bond in certain transactions.

(a) Except when the dollar amount of responsibility assumed exceeds its capital base, no bank, chartered or licensed to do business in this state, shall be required to furnish fidelity, surety, or performance bond, in business transactions involving:

(1) Garnishment;

(2) Replevin;

(3) Foreclosure;

(4) Forcible entry and detainer.

(b) At the beginning of any proceeding in all such business transactions, the bank shall, upon request, furnish to each party to the transaction a copy of its most recent statement of financial condition.

(c) Nothing in this section shall be construed to:

(1) Prevent a bank from electing or agreeing to furnish bond at its own cost;

(2) Prevent any other party of interest, desiring protection in a business transaction with a bank, from electing to secure and pay for a bond covering the bank to the benefit of such a party to the transaction;

(3) Amend or repeal any law pertaining to:

(A) Corporate surety or indemnity bonds covering directors, officers, or employees of such bank;

(B) Foreign corporations, associations, or persons not authorized to do business in this state;

(C) Actions available against such bank for injury or damage;

(D) Bonding requirements involving fiduciary activities.

SUBCHAPTER 2 – RESERVES AND DIVIDENDS

23-48-201. Membership in Federal Reserve System.

Any state bank shall have the right to own such amount of stock in a federal reserve bank as may be required for it to become a member of the Federal Reserve System .

23-48-202. Reserve requirements.

A state bank not a member of the Federal Reserve System shall maintain at all times a reserve fund as required by the Federal Reserve Board, unless otherwise provided by Department regulations.

23-48-203. Payment of dividends.

Any state bank may, from time to time, declare and pay dividends in accordance with Department regulations.

SUBCHAPTER 3 – ORGANIZATION AND MANAGEMENT GENERALLY

23-48-301. Application for incorporation.

(a) Any one (1) or more natural persons, eighteen years old or older, a majority of whom shall be bona fide residents of this state, who may desire to associate themselves by articles of incorporation for the purpose of establishing any state bank, may apply to the Commissioner to be incorporated. An application for authority to organize a state bank shall be submitted to the Commissioner in such form as the Commissioner may prescribe and shall include the information set forth in subsections (b) and (c) hereof, and contain such additional information which the Commissioner may require. Five (5) copies of the proposed articles of incorporation and proposed bylaws shall be filed with the application. The application and articles of incorporation shall be signed by each of the incorporators, and shall be accompanied by a filing

fee of not more than fifteen thousand dollars ($15,000) as set by Department regulations, which shall not be refundable.

(1) The name, citizenship, residence, and occupation of each incorporator, and of each of the initial directors, and the name and address of each stock subscriber, and the amount of stock paid for by each;

(2) The name and address of an individual within the state to whom notice to all incorporators may be sent;

(3) The total initial capital and the number of shares of each class of the capital stock to be authorized;

(4) The corporate name;

(5) The proposed location of the main banking office;

(6) If known, the name and residence of the proposed president, chief executive officer, operations officer, and, if applicable, the name and address of the proposed trust officer;

(7) The names of the natural persons who propose to own or control more than five percent (5%) of the capital stock;

(8) The past and present connection with any depository institution, financial institution or national trust company, other than as a customer on terms generally available to the public, of each proposed director and each subscriber to more than five percent (5%) of the capital stock;

(9) Evidence of the character, financial responsibility, and ability of the incorporators and proposed directors;

(10) A brief statement of the purposes for which the state bank is incorporated, and whether it shall operate a trust department;

(11) The term for which the state bank is to exist, which shall be perpetual unless otherwise limited;

(12) A statement signed and verified by the incorporators that the capital stock has been fully subscribed and the purchase price therefore has been paid into an escrow account approved by the Commissioner and that the requirements of 23-48-310 have been met;

(13) Proof that application for federal deposit insurance has been made; and

(14) Recitation of the need for and advisability of the approval to organize.

(c) The proposed articles of incorporation shall contain the following:

(1) The name of the proposed institution;

(2) The town or city in which the proposed institution is to be located;

(3) The amount of capital stock authorized, the number of shares of each class, the relative preferences, powers and rights of each class, and the amount of paid-in surplus;

(4) The names and places of residence of the stockholders and the number of shares held by each;

(5) A statement whether voting for directors shall or shall not be cumulative and the extent, if any, of the preemptive rights of stockholders;

(6) The term of the proposed institution's existence, which shall be perpetual unless otherwise limited;

(7) The names of the initial board of directors composed of not less than three natural persons who shall serve until the next annual meeting or until their successors are regularly elected and qualified;

(8) Such other information as the Department may require; and

(9) Such other proper provisions as the incorporators may choose to insert for the regulation of the internal affairs and business of the state bank.

(d) All persons purporting to act as or on behalf of a state bank, knowing there was no incorporation under this chapter are jointly and severally liable for all liabilities created while so acting.

23-48-302. Organizational expenses.

(a) Organizational expenses shall not be paid from capital or surplus funds of the state bank without the prior written consent of the Commissioner.

(b)(1) Prior to applying for a charter, the incorporators shall establish an organizational expense fund in an amount the Commissioner deems adequate.

(2) Such fund shall be used for expenses incurred by the incorporators in connection with the organization of the proposed state bank.

23-48-303. Promoter's fees prohibited.

(a) A state bank shall not pay any fee, compensation, or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions, selling shares, or other services in connection with its organization or for securing subscriptions for stock, except legal fees and other usual and ordinary expenses necessary for its organization.

(b) A majority of incorporators shall file with the Department, at the time of filing of the articles, an affidavit:

(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the state bank, subscription for its shares, and sale of its shares; and

(2) Stating that no fee, compensation, or commission prohibited by this section has been paid or incurred.

(c) In the event of a violation of this section, the Commissioner may disapprove the articles on account of such violation.

23-48-304. Investigation of new charter applications by Commissioner.

As soon as practicable after acceptance of any application for a new state bank charter and receipt of the filing fee, the Commissioner shall ascertain, from the best sources of information at his command, the character and general fitness of the persons named as stockholders of more than five percent (5%) of the issued stock and their standing in the community in which the proposed institution is to be located. The investigation shall seek to determine the probable support for the new state bank and the adequacy of existing facilities and services in the community. The investigation shall address the proposed institution's earnings and deposits prospects, the ability and character of its proposed management, the adequacy of initial capital, the safety and soundness of intended operations, the economic conditions in the market to be served, the convenience and needs of the community to be served, and whether or not its proposed corporate powers are consistent with applicable banking law. The Commissioner shall also determine to his satisfaction that:

(1) The persons named as stockholders of more than five percent (5%) of the issued stock, incorporators, and directors have the confidence of the community and are able, financially and otherwise, to discharge the obligations resting upon them under any of the provisions of this act;

(2) The requisite capital has been fully subscribed and the purchase price therefore has been paid into an escrow account approved by the Commissioner and that the requirements of 23-48-310 have been met;

(3) A majority of the stockholders are residents of this state; and

(4) There exists an economic need for the business in the community.

23-48-305. Issuance and filing of certificate of incorporation.

(a) The Commissioner shall, upon approval of the Banking Board and payment of the fees, give to the persons named as incorporators a certificate of incorporation, in such form as he may prescribe, if the Commissioner has made satisfactory determinations as to the matters described in subsections (1) through (4) of 23-48-304 and is also satisfied that appropriate federal deposit insurance has been obtained.

(b) The Commissioner shall also return one (1) of the copies submitted to him of the articles of incorporation upon which he has endorsed the fact of the issuance by him of the certificate of incorporation.

(c) Upon receipt of the certificate of incorporation, the institution may proceed with its business.

23-48-306. Relocation of place of business -- Amendment of articles.

(a)(1) Any state bank may apply for authority to change its place of business from one (1) municipality to another by filing with the Commissioner, as an amendment to its articles of incorporation, two (2) copies of a resolution to that effect, and such additional information which the Commissioner may require.

(2) The resolution must be adopted upon the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon, at any annual or special meeting of the stockholders.

(3) Both copies of the resolution shall be signed by the president or a vice president.

(4) One (1) of the copies of the resolution shall be retained by the Commissioner; the other copy, if the Commissioner and Banking Board approve the amendment, shall be returned with the Commissioner's endorsement of approval thereof.

(b) The amendment shall become effective when it has been approved by the Commissioner and the Banking Board.

(c) Each application for authority to change a state bank's place of business shall be accompanied by a fee as shall be set by Department regulation, which fee shall be paid to the Department.

23-48-307. Objects and method of charter amendment.

(a) Any state bank, through amendment to its articles of incorporation, may from time to time do the following, which shall be in addition to all things it may otherwise do through amendment under this act:

(1) Change its corporate name;

(2) Change, enlarge, or diminish its corporate purposes, in accordance with the applicable state law;

(3) Increase or decrease its authorized capital stock, subject to the limitations and in the manner set out in 23-48-311;

(4) Effect splits of its shares or a distribution of some portion of its assets, other than cash or its own stock;

(5) Effect any fundamental change in its corporate affairs which may be accomplished by charter amendment under any other statute of Arkansas.

(b) Articles of incorporation of a state bank may be amended at any annual or special meeting of the stockholders.

(c) An amendment to the articles of incorporation may be adopted on the affirmative vote of the owners of a simple majority of each class of stock entitled to vote on the proposed amendment.

23-48-308. Filing of amendments to articles of incorporation.

(a) An application for approval of a proposed charter amendment described in 23-48-307 shall be submitted to the Commissioner in such manner and form as the Commissioner may prescribe and shall include the information set forth in subsection (b) hereof, and contain such additional information which the Commissioner may require. The application shall include duplicate copies of each proposed charter amendment, in the form of an amendment to the articles of incorporation, each copy to be certified by the president or a vice president.

(b) Each duplicate shall have annexed thereto, over the official signatures, a certificate showing:

(1) The date on which the amendment was authorized by the stockholders;

(2) The number of shares of each class entitled to vote on the amendment which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the amendment whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the amendment;

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c) The Commissioner may also require the delivery to him of such additional copies of the proposed amendment as he may desire in order to present the matter to the Banking Board and any parties opposing the amendment.

(d) One (1) of the duplicate copies of any charter amendment filed with the Commissioner and certified as prescribed in this section, bearing an endorsement of the Commissioner showing that the amendment has been approved by him and by the Banking Board shall be returned to the applicant state bank. The amendment shall become effective when it has been approved by the Commissioner and the Banking Board.

(e) Each application for approval of a proposed charter amendment described in 23-48-307 shall be accompanied by a fee of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Such fee shall be set by Department regulation and shall be paid to the Department.

23-48-309. Names of state banks and subsidiary trust companies.

(a) Prior to the formation of a state bank, or prior to the consummation of an interstate merger transaction, a person, may reserve the exclusive use of a corporate name by delivering an application to the Commissioner for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Commissioner finds that the

corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable two hundred and seventy (270) day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commissioner a signed notice of transfer that states the name and address of the transferee.

(c) No state bank, registered out-of-state bank or subsidiary trust company shall conduct any business in this state under a fictitious name unless it first files with the Commissioner a form supplied or approved by the Commissioner giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant entity;

(2) A brief statement of the character of business to be conducted under the fictitious name;

(3) The name, home state, and location (giving city and street address) of the registered office in this state of the applicant entity.

(d) Each such form shall be executed in duplicate and filed with the Commissioner, who shall maintain an index of such filings. The Commissioner shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Commissioner, shall be returned to the state bank, out-of-state bank or subsidiary trust company. However, the Commissioner shall not accept such a filing if the proposed fictitious name is the same as, or confusingly similar to, the name of any bank, domestic corporation, or any foreign corporation authorized to do business in this state, or any name reserved for any such entity.

(e) Copies of such filed forms, certified by the Commissioner, shall be admitted in evidence where the question of filing may be material.

(f) If, after filing hereunder, the applicant is dissolved, or (being a foreign corporation or registered out-of-state bank) surrenders or forfeits its rights to do business in Arkansas or ceases to do business in Arkansas under the specified fictitious name, such bank or subsidiary trust company shall be obligated to file with the Commissioner a cancellation of its privilege under this section. If such cancellation is not filed, the Commissioner, upon satisfactory evidence, may cancel such privilege, in which event such cancellation shall be certified by the Commissioner, who will file the same without fee.

(g) If a state bank, registered out-of-state bank or subsidiary trust company which has not filed hereunder has heretofore or shall hereafter become a party to any contract, deed, conveyance, assignment, or instrument of encumbrance in which such bank or subsidiary trust company is referred to exclusively by a fictitious name, the obligations imposed upon such bank or subsidiary trust company under said instrument and the right sought to be conferred on third parties thereunder may be enforced against it; but the rights accruing to such bank or subsidiary

trust company under said instrument may not be enforced by the bank or subsidiary trust company in the courts of this state until it has complied with this section and pays to the Commissioner a civil penalty of three hundred dollars ($300).

23-48-310. Minimum capital requirements generally.

(a) For all state banks chartered after May 30, 1997, the fully paid-up capital shall not be less than one million dollars ($1,000,000). For all state banks, regardless of the date of their charter, the following capital requirements shall apply:

(1) The minimum "capital base" shall be determined by the Commissioner;

(2) The capital requirements for any state bank must also satisfy the requirements for deposit insurance of the Federal Deposit Insurance Corporation or its successor.

(b)(1) The Commissioner may increase the minimum capital requirement of any state bank, regardless of the date of its charter when, in the Commissioner's judgment, conditions within the state bank or the state bank's service area warrant such an increase.

(2) In the event the Commissioner orders an increase in a state bank's capital requirement, the state bank shall have at least thirty (30) days from the date of the order to comply with the order, or such longer period as the Commissioner may allow;

(3) In the event a state bank disagrees with the Commissioner's judgment in ordering an increase in its minimum capital requirement, it may appeal the Commissioner's decision to the Banking Board. Such an appeal may be had by following the procedures specified by the Banking Board.

(c) Shares of a newly chartered state bank may be issued only for cash in an amount sufficient to meet the capitalization requirements set by the Commissioner which shall be at least the aggregate par value of the shares plus such amounts, if any, necessary to assure that after issuance of the shares the bank will have the minimum capital base required by the Commissioner under this section, and the expense fund required by 23-48-302.

23-48-311. Increase or decrease of capital stock.

(a) The authorized capital stock of any state bank may be increased or decreased by amendment to its articles of incorporation, subject to the requirements pertaining to such amendments contained in 23-48-307 and 308.

(b) A capital stock increase may be effected by the issuance and sale of additional shares, which additional shares may be of the same class as the shares then outstanding or may be represented by a different class or classes having privileges, preferences, and voting rights greater or less than those appurtenant to the then outstanding shares, whether common stock or preferred stock.

(c) Stock dividends may be paid out of surplus or undivided profits.

(d) A state bank may authorize common stock, which may be retained, unissued by the institution, until such time as the board of directors shall order its sale or distribution.

(e) No decrease of the capital stock shall be permitted without the consent of the Commissioner and in no event shall the capital be reduced to a figure below the minimum prescribed by law.

23-48-312. Liability of shareholders -- Assessment of stock.

(a) Except as otherwise provided in this section, a purchaser from a state bank of its own shares is not liable to the state bank or its creditors with respect to the shares except to pay the full consideration, fixed as provided by law, for which the shares were issued or were to be issued. Except as otherwise provided in this section, or unless otherwise provided in the articles of incorporation, a shareholder of a state bank is not personally liable for the acts or debts of the state bank except that he may become personally liable by reason of his own acts or conduct.

(b) When, in the opinion of the Commissioner, the report of an examination of a state bank discloses bad or worthless assets which should be charged off, he shall immediately instruct the officers of the state bank to collect and realize upon such assets within a time fixed by him, and, if not collected or realized upon within that time, the assets shall immediately be charged off. If the capital, as defined by the Commissioner, is thereby impaired, the Commissioner shall order the directors to make an assessment upon the capital stock in form and manner as provided in subsection (c) of this section to restore capital.

(c)(1) The directors of every state bank shall have power and authority to levy and collect assessments on the stock of the state bank and shall make such levy on the order of the Commissioner for the purpose of restoring any deficiency that may occur by reason of the impairment of the capital of the state bank.

(2) Should the assessment not be paid within thirty (30) days from the date the assessment is made, the assessed stock, or so much thereof as may be necessary, shall be sold at public auction to provide funds to meet the assessment.

(3) A lien is created in favor of the state bank on the stock to pay the assessments so made.

(d) For purposes of this section, a state bank's capital is impaired when, in the opinion of the Commissioner, its assets are of such a character and value that it is unable in the ordinary course of business to meet the minimum capital requirements as specified from time to time by administrative policies adopted by the Commissioner. In the absence of fraud or collusion, the determination of the Commissioner as to impairment of capital is conclusive.

23-48-313. Classes of stock -- Fractional shares -- Scrip.

(a)(1) The shares of the capital stock of any state bank may consist of shares of common stock or of common and preferred stock. Common or preferred stock may be divided into classes with such designations, preferences, limitations, retirement provisions, and relative rights as shall be stated in the articles of incorporation or an amendment thereto.

(2) The voting rights of any class of stock may be denied or restricted except that the holder of stock belonging to a class of stock issued as nonvoting shall be entitled to vote in respect to a dissolution or a merger or consolidation, or in respect to any proposal that would adversely affect the preferences, privileges, and other rights annexed to such shares. A stockholder's right to vote under Arkansas Constitution, Article 12, Section 8, upon a proposal to increase the stock of the state bank may not be abridged.

(b)(1) Unless prohibited by the articles of agreement, or an amendment thereto, or by bylaws, a state bank may issue a certificate for a fractional share or, by action of its board of directors, may issue, in lieu thereof, scrip in bearer or registered form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share.

(2) Unless otherwise provided in the articles of agreement or in an amendment thereto, or in the bylaws, a fractional share shall, but scrip shall not, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.

(3) Where scrip is issued, the directors may provide that it shall become void if not exchanged for certificates representing full shares before a specified date, or the board may provide that the shares for which the scrip is exchangeable may be sold by the state bank and the proceeds thereof distributed to the holders of the scrip.

23-48-314. Preemptive rights of stockholders.

(a) Unless otherwise provided by the articles of incorporation, every stockholder, upon the sale for cash of any new stock of the same class as that which he already holds, shall have the right to purchase his pro rata share thereof at a price not exceeding the price at which it may be offered to others, which price may be in excess of par.

(b) Where the articles of incorporation do not prohibit such preemptive rights, the terms and conditions of the rights, and the time limit fixed for the exercise thereof, may be prescribed in the articles of incorporation or, if not so prescribed in the articles of incorporation, then in the bylaws or in the resolution of the board of directors adopted in connection with the stock increase. Provided, however, that for all state banks chartered after May 30, 1997, there shall be no preemptive rights in stockholders except as specified in the articles of incorporation.

23-48-315. Issuance and sale of capital notes.

(a)(1) Any state bank may, through action of its board of directors and without requiring any action by stockholders, with the written consent of the Commissioner, issue and sell its capital notes at not less than par.

(2) The capital notes may be sold for cash or, with the written consent and approval of the Commissioner, for property.

(b)(1) The capital notes shall be in such denominations, and the holders thereof shall be entitled to such annual return thereon, as the Commissioner may approve.

(2) The capital notes shall provide that they may be retired at such time or times and in such manner as may be fixed by the board of directors of the state bank but in no event later than twenty (20) years after the date of their issuance.

(3) The par value of the notes shall not exceed one-half (1/2) of the capital base of the issuing state bank.

(4)(A) The state bank, in connection with the issue, subscription, or sale of capital notes, may confer upon the holder of each capital note the right to convert the note into shares of the common stock of the state bank on such terms as are set forth in the instrument evidencing the conversion rights. The terms may include any agreements not repugnant to law for the protection of the conversion rights, including, but without limiting, the generality of such authority:

(i) Restrictions upon the authorization or issuance of additional shares;

(ii) Provisions for the adjustment of the conversion price or ratio;

(iii) Provisions concerning rights in the event of reorganization, merger, consolidation, or sale or other disposition of all, or substantially all, of the assets of the corporation; and

(iv) Provisions for the reservation of authorized but unissued shares to satisfy the conversion rights.

(B) If the shares into which the obligations are convertible would be subject to preemptive rights if issued for cash, the conferring of the conversion rights must be authorized at a stockholders' meeting on a vote of at least a majority of the shares of the issued and outstanding capital stock of the state bank. The vote shall release the preemptive rights to the shares required to satisfy such conversion rights.

(c)(1) Capital notes shall at the time of their issuance be, and shall at all times thereafter remain, subordinate in rank and subject to the prior payment of all types of deposits of the state bank.

(2) The state bank may, for the security and protection of the holders of the capital notes, agree upon such restrictions on the distribution or payment of dividends on its capital stock as the board of directors may decide.

(d)(1) Capital notes and accrued return thereon may be retired at any time, in whole or in part, with the written approval of the Commissioner, unless otherwise provided in the capital notes.

(2) In any case where capital notes issued under the provisions of this section are callable in a period less than twenty (20) years after their issuance, the state bank issuing the capital notes may, by a provision inserted therein to that effect, reserve the right, from time to time, to extend the time for the retirement of the capital notes. In that event, the state bank issuing the capital notes may, by vote of a majority of its board of directors, with the consent of the Commissioner, make the extension.

23-48-316. Transfer of stock.

(a) The stock of every state bank shall be transferable only on the books of the bank.

(b) When any number of shares of the stock of a state bank or shares of stock in an Arkansas bank holding company shall be transferred to any transferee or joint transferees, the state bank or Arkansas bank holding company shall promptly transmit to the Commissioner a certificate, on a form prescribed by the Commissioner, showing such transfer. The certificate also shall show the total number of shares at that time outstanding in the name of the transferee or anyone known by the state bank or Arkansas bank holding company to be the nominee of the transferee or holding in trust for the transferee. If an Arkansas bank holding company is a reporting company under § 13 or § 15(d) of the federal Securities and Exchange Act, then the Arkansas bank holding company may satisfy the reporting requirements under this section by reporting transfers one (1) time per year at such time and in such manner as required by the Commissioner.

23-48-317. Change in control.

(a) As used in this section, unless the context otherwise requires, "control" has the meaning set forth in 12 U.S.C. § 1841(a)(2).

(b)(1) Prior approval by the Commissioner of any transfer of ownership shall not be required unless and until:

(A) A transfer reported to the Commissioner would result in the control by the transferee and any nominee of the transferee and any person holding in trust for the transferee of twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company; or

(B) A transfer reported to the Commissioner would increase a then-existing ownership of the capital stock of a state bank or Arkansas bank holding company already controlled by the transferee to twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company.

(2) In either of the situations set out in subsections (b)(1)(A) and (b)(1)(B) of this section, no shares held in such ownership may be voted unless the ownership, and the transfers mentioned in subsections (b)(1)(A) and (b)(1)(B) of this section, shall be approved by the Commissioner and his approval given to the transferee in writing. The Commissioner in his discretion may at any time require any transferee to certify in writing as to the extent of the legal or beneficial ownership by the transferee of the stock of the state bank or Arkansas bank holding company.

(c) Any transferee seeking to acquire twenty-five percent (25%) or more of the capital stock of a state bank or Arkansas bank holding company shall file with the Commissioner an application for approval submitted to the Commissioner in such form as the Commissioner may prescribe, such application to be accompanied by a filing fee of not less than five hundred dollars ($500) nor more than five thousand dollars ($5000) as set by Department regulation. The application shall include the information set forth in subsection (d) hereof, and contain such additional information as the Commissioner may require.

(d) An application for approval to acquire control of a state bank or an Arkansas bank holding company, shall contain evidence that:

(1) The proposed transaction will promote the safety and soundness of the institution to be controlled;

(2) If the applicant is a bank holding company, the transaction will not result in a violation of the provisions of 23-48-405;

(3) The applicant bank or the bank subsidiaries of an applicant bank holding company adequately serve the convenience and needs of the communities served by them in accordance with the federal Community Reinvestment Act of 1977; and

(4) The applicant intends to adequately serve the convenience and needs of the communities served by the state bank or state bank subsidiaries proposed to be controlled in accordance with the federal Community Reinvestment Act of 1977. The application shall specifically address the proposed initial capital investments, proposed loan policies, proposed investment policies, proposed dividend policies, and general plan of proposed business of the institution proposed to be controlled, including the full range of consumer and business services which are proposed to be offered.

(e) The Commissioner shall approve an application to acquire control of a state bank or an Arkansas bank holding company if he is satisfied that:

(1) The evidence and information contained in the application would result in the likelihood that the public interest would be served;

(2) The safety and soundness of the institution to be controlled is adequately addressed; and

(3) Approval of the application, if the applicant is a bank holding company, will not result in a violation of the provisions of 23-48-405.

23-48-318. Stockholder meetings -- Notice of special meeting.

(a) A special meeting of the stockholders, whether held for the purpose of amending the articles of incorporation or for any other lawful purpose, may be called as prescribed in the bylaws or, if the bylaws are silent in such respect, by the president or by resolution of the board of directors.

(b) Written notice of the special meeting shall be given to each stockholder entitled to vote at the meeting, other than stockholders who waive notice in writing, for the time and in the manner set out in the bylaws subject to the following minimum requirements:

(1) The notice must be signed by an officer of the state bank;

(2) The notice must state the time and place of the meeting and must also state the nature of the proposals to be submitted to the stockholders at the meeting;

(3) The notice must be mailed to each such stockholder, other than those waiving notice, by first class mail, postage prepaid, directed to the stockholder at the address of the stockholder shown on the stock records of the state bank. The depositing of the notice in the mail as above prescribed shall constitute the giving of the notice. It is not necessary in any event that the mailing be by registered or certified mail;

(4) If the meeting is called for the purpose of increasing the authorized capital stock of the state bank, the notice shall be mailed at least sixty (60) days prior to the meeting, but if the meeting is called for any other purpose, the notice shall be mailed for such number of days prior to the meeting as may be prescribed in the bylaws. In no event shall mailing be less than ten (10) days prior to the date of the meeting.

(c) Any stockholder may waive the right to receive notice of special meetings of the stockholders by:

(1) A written waiver of the right, signed by the stockholder, which shall be effective as a waiver until revoked; or

(2) The stockholder’s attendance, in person or by proxy, at the meeting.

23-48-319. Stockholder meetings -- Notice of annual meeting.

(a) Not less than ten (10) days written notice of an annual meeting shall be given to each stockholder, other than stockholders who waive notice in writing, which notice shall be mailed by first class mail, postage prepaid, and directed to the stockholder at his address shown on the stock records of the state bank.

(b) However, if it is proposed at an annual meeting to approve an amendment to the articles of incorporation, or to approve a merger, consolidation, conversion, corporate dissolution, or reorganization through plan of exchange, the annual meeting will be regarded, so far as such special matters are concerned, as a special meeting. It shall not be lawful to submit such special matters at an annual meeting unless, in respect to the special matters, there shall have been a call of the meeting and written notice given all as required in 23-48-318 concerning special meetings.

23-48-320. Stockholder meetings -- Quorum -- Voting.

(a)(1) Each share of stock shall be entitled to one (1) vote on each matter submitted at a meeting of stockholders except to the extent that the voting rights of any class are limited or denied, to an extent permitted by law, by the articles of incorporation or an amendment thereto.

(2) Subject to the provisions of subsection (d) hereof, in electing directors at meetings of stockholders, each stockholder of a state bank shall have a right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares so as to give one (1) candidate as many votes as the number of directors multiplied by the number of shares of stock held by him shall equal. The stockholder may distribute his votes on the same principle among as many candidates as he shall see fit, unless it is provided otherwise in the articles of incorporation or the bylaws of the state bank.

(b) A majority of the issued and outstanding shares entitled to vote at the meeting shall constitute a quorum. If a quorum is present, the vote of a majority of the shares present or represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders unless the vote of a larger majority is required by the bylaws or by this or any other applicable statute.

(c) A stockholder may vote in person or by written proxy. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy, but a proxy may be of indefinite duration if coupled with an interest.

(d) For all state banks chartered after May 30, 1997, there shall be no cumulative voting privilege unless the state bank’s articles of incorporation so provide.

23-48-321. Closing transfer books -- Fixing record date.

(a) For the purpose of determining stockholders entitled to notice of, or to vote at, any annual or special meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, the board of directors of a state bank may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, seventy (70) days before the date of the meeting.

(b) In lieu of closing the stock transfer books, the board of directors may fix a date in advance of the meeting as the record date for any such determination of stockholders. The date in any case may not be more than seventy (70) days prior to the date on which the meeting is to be held.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of, or to vote at, a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders.

(d) When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

23-48-322. Board of directors -- Standard of conduct.

(a)(1)(A) The affairs of any state bank shall be managed and controlled by a board of directors of not less than three (3) persons, who shall be selected at such times and in such manner as may be provided by its bylaws.

(B) Members of the board of directors are not required to be stockholders of the state bank or of its bank holding company unless so provided in the bylaws of the state bank.

(2) The initial board of directors may be elected by the incorporators, with the privilege of cumulative voting to have no application to the election of the initial board.

(b) Any vacancy in the board of directors of any state bank shall be filled by appointment by the remaining directors, and any director so appointed shall hold office until the election of his successor.

(c) Unless the articles of incorporation, or an amendment thereto, shall provide to the contrary, the directors shall have exclusive power to promulgate, amend, or repeal bylaws of the state bank.

(d) A director of a bank which maintains its main banking office within the state of Arkansas shall discharge his or her duties as a director, including his or her duties as a member of any committees:

(1) In good faith;

(2) With the care an ordinary prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interest of the bank.

(e) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the bank whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(f) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted in subsection (e) of this section unwarranted.

(g) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

23-48-323. Officers -- Selection, term, etc.

(a) A state bank shall have a president, a secretary, and such other officers as the directors may from time to time designate. An individual may hold more than one (1) office.

(b) Such officers shall hold their offices for a term of one (1) year or until successors are elected unless sooner removed by the board.

(c) The board shall require such bonds of the officers as it shall deem proper and necessary to protect the funds of the state bank.

23-48-324. Officers -- Taking acknowledgments.

(a) An official of a bank who holds a commission as notary public may act as notary in taking the acknowledgment of mortgages and deeds of trust executed in favor of such bank. All such instruments previously acknowledged in this manner are declared to have been lawfully acknowledged and entitled to record.

(b) This section does not authorize such official to take the acknowledgment of a deed of trust wherein he is named the trustee.

23-48-325. Banker's banks.

(a) Any state bank may purchase, for its own account, shares of a bank or bank holding company if:

(1) The stock of the bank or bank holding company whose shares are being purchased is owned exclusively by financial institutions; and

(2) The bank or bank holding company whose shares are being purchased and all subsidiaries thereof are engaged exclusively in providing services for financial institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each.

(b) In no event shall the total amount of stock held by a bank in any bank or bank holding company described in subsection (a) of this section exceed at any time ten percent (10%) of the holding bank's capital base. In no event shall the purchase of that stock result in the purchasing bank acquiring more than five percent (5%) of any class of voting securities of the bank or bank holding company whose shares are purchased.

(c) The Commissioner is authorized to receive applications, hold hearings on the applications, and, with the approval of the Banking Board, issue charters for a banker's bank.

(d) Any banker's bank chartered under this section must have its deposits insured by the Federal Deposit Insurance Corporation.

23-48-326. Application of Arkansas Business Corporation Act of 1987.

All state banks and subsidiary trust companies shall be subject to current provisions of the Arkansas Business Corporation Act of 1987 to the extent that those provisions are not in conflict with the provisions of this act. In the event that any provision of the Arkansas Business Corporation Act of 1987 is in conflict with any provision of this act, then the provision of this act shall control.

SUBCHAPTER 4 – BANK HOLDING COMPANIES

23-48-401. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Bank subsidiary", with respect to a specified bank holding company, means:

(A) Any bank, twenty-five percent (25%) or more of whose shares, excluding shares owned by the United States or by any company wholly owned by the United States, are owned or controlled by the bank holding company;

(B) Any bank, the election of a majority of whose directors is controlled in any manner by the bank holding company;

(C) Any bank, twenty-five percent (25%) or more of whose voting shares are held by a trustee for the benefit of the shareholders or members of the bank holding company;

(D) Any bank, with respect to the management or policies of which, the Board of Governors of the Federal Reserve has determined that such bank holding company has the power, directly or indirectly, to exercise a controlling influence; or

(E) Any bank which has been found by the Board of Governors of the Federal Reserve to be controlled by a bank holding company.

(2) "Company" means any corporation, limited liability company, or business trust doing business in this state but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

23-48-402. Nonapplicability of subchapter.

(a) This subchapter shall not apply to shares of any company:

(1) Acquired by a bank holding company or by a bank in satisfaction of a debt previously contracted in good faith;

(2) Which are held or acquired by a bank in good faith in a fiduciary capacity; or

(3) Which are of the kinds and amounts eligible for investments by state banks under the provisions of 23-47-401.

(b) Notwithstanding subsection (a) hereof, a bank holding company or a state bank shall dispose of shares acquired in satisfaction of a debt previously contracted in good faith within a period of two (2) years from the date on which they were acquired. The Commissioner is authorized upon application to extend, from time to time for up to an additional three (3) years, for not more than one (1) year at a time, the two-year period referred to above for disposing of any shares acquired by a bank holding company, or state bank, in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Commissioner's judgment, such an extension would not be detrimental to the public interest, but no such extensions shall, in the

aggregate, exceed three (3) years. However, a bank holding company shall not be prohibited from purchasing such shares from any of its banking subsidiaries, subject to the provisions of 23-48-405 and 406.

23-48-403. Penalties.

(a) Any person which willfully violates any provision of this part, or order issued by the Commissioner pursuant thereto, or any Department regulation is guilty of a class A misdemeanor.

(b) Any individual who willfully participates in a violation of any provision of this subchapter shall, upon conviction, be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or imprisoned not more than one (1) year, or both.

23-48-404. Administration.

The Commissioner is authorized to and shall administer and carry out the provisions of this subchapter and shall issue such regulations and orders as may be necessary to discharge this duty and to prevent evasions of this part.

23-48-405. Ownership or control of subsidiaries.

It shall be unlawful for a bank holding company to directly or indirectly own or control more than one (1) bank subsidiary if any such bank subsidiary with its main office in Arkansas has a de novo charter.

23-48-406. Acquisition of bank stock or assets -- Limitations.

(a) A bank holding company is prohibited from acquiring ownership or control of the stock or the assets of any bank that has its main office or any branch office in Arkansas if, after giving effect to the acquisition of the stock or the assets of that bank, the acquiring bank holding company would own or control, directly or indirectly, banks having in the aggregate more than twenty-five percent (25%) of the total deposits within the State of Arkansas held by banks.

(b) Determinations of the percentage of total deposits required by subsection (a) of this section shall be made as of the date of acquisition of the stock or assets. The determinations shall be made with reference to the average total deposits of the respective banks as reflected on their quarterly financial reports for the four (4) fiscal quarters immediately preceding the date of acquisition as filed with the Federal Deposit Insurance Corporation, or its successor, or if the deposits of the bank are not insured by the Federal Deposit Insurance Corporation, then as filed with the Department, or its successor.

(c) For the purpose of this section, the term “deposits” shall include, without limitation, all demand, savings, time, certificates of deposit, and other similar depository accounts of any person, but shall not include depository accounts of banks or public funds.

(d) Nothing in this section is intended to prevent any bank holding company domiciled in the State of Arkansas from acquiring ownership or control of banks domiciled outside the State of Arkansas if applicable state or federal laws permit the Arkansas bank holding company to do so. However, except as permitted by applicable federal law or specifically authorized by this act, no bank holding company domiciled outside the State of Arkansas shall be authorized to acquire direct or indirect control of a bank domiciled within the State of Arkansas.

SUBCHAPTER 5 – MERGERS, CONSOLIDATIONS, CONVERSIONS, EMERGENCY ACQUISITIONS, PURCHASES OR ASSUMPTIONS

23-48-501. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Converting bank" means a state bank converting to a national bank, a national bank converting to a state bank, or a savings and loan association converting to a state bank;

(2) "Dissenters' rights" means the rights of dissenting stockholders specified in 23-48-506;

(3) "Merger" includes consolidation in all sections of this subchapter except 23-48-509;

(4) "Purchase or assumption" means the purchase by a state bank of over fifty percent (50%) of the assets of another depository institution, or the assumption by a state bank of over fifty percent (50%) of the liabilities of another depository institution;

(5) "Wholly owned Arkansas bank holding company" means a "bank holding company", as that term is defined in 23-45-102, incorporated under the laws of the State of Arkansas, all of the outstanding shares of each class of the capital stock of which is owned by a single individual or entity.

23-48-502. Merger or conversion of state bank into national bank.

(a) Subject to the provisions of this subchapter and provided that no Arkansas bank which is a party to the merger does not have a de novo charter, a state bank may merge into a national bank, including a national bank with a home state other than Arkansas.

(b) The action to be taken by a merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks, at the time of the action, by the laws of the United States, and not by the law of this state, except that:

(1) The assenting vote of the holders of a simple majority of each class of voting stock of a state bank shall be required for the merger or conversion;

(2) Upon the merger of a state bank into a national bank, the stockholders of the state bank shall have dissenters' rights; and

(3) If the national bank is an out-of-state bank, then Subchapter 9, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-901 et seq.) shall be applicable to the merger.

(c) No approval by the Commissioner or by any other state authority shall be necessary for a state bank to convert or merge into a resulting national bank as provided by federal law. However, within ten (10) days following the effective date of the merger or conversion, the resulting bank shall be required to file in the office of the Commissioner, a complete copy of the

articles of merger or conversion. This copy must be certified by the president or a vice president of the resulting bank.

(d) Upon the completion of the merger or conversion, the charter of any merging or converting state bank shall automatically terminate.

23-48-503. Merger of bank or savings and loan association into state bank.

(a) With the approval of the Commissioner and the Banking Board and after a public hearing as prescribed by the applicable law of this state, any bank (including an out-of-state bank upon compliance with Subchapter 9, Chapter 48, Title 23 of Arkansas Code Annotated) or savings and loan association may be merged with a state bank to result in a state bank, provided that, if any national bank, out-of-state bank or savings and loan association shall be involved in the merger, there shall be compliance with the requirements of the state or federal laws applicable to such national bank, out-of-state bank or savings and loan association. A bank, including an out-of-state bank, or savings and loan association may merge into a state bank provided that none of the Arkansas banks which are parties to the merger has a de novo charter. The applicant shall file an application with the Commissioner containing such information as the Commissioner may require and if an out-of-state bank is a party to the merger all applicable provisions of Subchapter 9, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-901 et seq.) and the applicable law of the home state of the merging bank shall be satisfied. The assenting vote of a simple majority of each class of voting stock of the banks and resulting bank shall be required for the merger, provided that no vote of the shareholders of the resulting bank shall be required if the number of shares to be issued in connection with the merger does not exceed twenty percent (20%) of the outstanding shares of the resulting bank prior to the merger.

(b) The Commissioner shall provide the Banking Board with the results of the investigation of the application.

(c) The Commissioner shall approve the application if, at the hearing, both the Commissioner and the Banking Board find that:

(1) The proposed merger provides adequate capital structure;

(2) The terms of the merger agreement are fair;

(3) The merger is not contrary to the public interest;

(4) The proposed merger adequately provides for dissenters' rights; and

(5) The requirements of all applicable state and federal laws have been complied with.

23-48-504. Conversion of national bank or savings and loan association into state bank.

(a) A national bank or savings and loan association having its main office in this state which follows the procedure prescribed by applicable federal or other law may convert into a

state bank and may be granted a charter by the Banking Board, with the concurrence of the Commissioner.

(b) The national bank or savings and loan association may apply for a state charter by filing with the Commissioner an application containing such information the Commissioner may require along with a certificate signed by its president or a vice president setting forth the action taken in compliance with the provisions of the applicable laws, accompanied by the articles of incorporation approved by a majority vote of the stockholders for the governance of the applicant as a state bank.

(c) The public hearing at which the issuance of the state charter is authorized shall be called by the Commissioner:

(1) On not less than fourteen (14) days written notice to the applicant and to each member of the Banking Board; and

(2) Upon publication in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, at least fourteen (14) days before the hearing, publication to show the time, place, and purpose of the hearing.

(d) If, at the hearing, both the Commissioner and the Banking Board find that the proposed state bank meets the standards as to location of offices, capital structure, and character of officers and directors required for the incorporation of a state bank, they shall grant the application for conversion.

23-48-505. Merger of state bank into an out-of-state state-chartered bank

(a) Subject to the provisions of this subchapter and provided that no Arkansas bank which is a party to the merger has a de novo charter, a state bank may merge into an out-of-state bank.

(b) The action to be taken by a merging state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for the out-of-state state-chartered banks, at the time of the action, by the laws of the home state of the out-of-state state-chartered bank, and not by the law of this state, except that:

(1) The assenting vote of the holders of a simple majority of each class of voting stock of a state bank shall be required for the merger; and

(2) Upon the merger of a state bank into an out-of-state state-chartered bank, the stockholders of the state bank shall have dissenters' rights.

(c) The merger shall only be consummated after compliance with all applicable provisions of Subchapter 9, Chapter 4, Title 23 of Arkansas Code Annotated (23-48-901 et seq.).

(d) Upon the completion of the merger, the charter of any merging state bank shall automatically terminate.

23-48-506. Dissenting stockholders.

(a) For purposes of this section, with respect to a state bank:

(1) "Corporate action" means:

(A) Consummation of a merger to which the state bank is a party;

(B) Consummation of a sale or transfer of over fifty percent (50%) of the state bank's assets to another depository institution; or

(C) Consummation of a sale or transfer of over fifty percent (50%) of the state bank's liabilities to another depository institution;

(2) "Selling bank" means a state bank selling or transferring over fifty percent (50%) of its assets or over fifty percent (50%) of its liabilities to another depository institution.

(b)(1) The owner of shares of a state bank which were not voted for a corporate action, and who has given notice in writing to the state bank at or prior to the meeting of the stockholders approving the corporate action, that he dissents from the corporate action shall be entitled to receive in cash the value of the shares held by him, if the dissenting stockholder has delivered a written demand for payment to the resulting bank at any time within ten (10) days after the date on which the stockholders' meeting authorizing the corporate action was concluded.

(2) This written demand for payment shall state the number and the class of shares owned by the dissenting stockholder. Any dissenting stockholder failing to make the demand shall be bound by the terms of the purchase or assumption, or merger.

(3) The resulting bank shall fix an amount, which it considers to be not more than the fair market value of the shares of the merging, resulting, or selling bank as of the date on which the stockholders' meeting authorizing the corporate action was concluded, which it will offer to pay dissenting stockholders entitled to payment in cash. Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his shares, the resulting bank shall give the dissenting stockholder notice of the amount it will pay for dissenting shares within twenty (20) days after the date on which the stockholders' meeting authorizing the corporate action was concluded.

(4) Any dissenting stockholder may agree to accept the amount in lieu of pursuing the appraisal remedy set forth below by delivering a written acceptance of the offer to the resulting bank within thirty (30) days after the date on which the stockholders' meeting authorizing the corporate action was concluded.

(c)(1) The value of shares held by dissenting stockholders entitled to receive in cash the value of the shares held by them, who do not accept the offer of the resulting bank within the thirty-day period set forth above, shall be determined as of the date on which the stockholders'

meeting authorizing the corporate action was concluded by three (3) appraisers. The appraisers are to be chosen as follows:

(A) One (1) shall be selected by the dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by the dissenting stockholders;

(B) One (1) shall be selected by the board of directors of the resulting bank; and

(C) The third shall be selected by the two (2) so chosen.

(2) The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern. However, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided herein, the stockholder may, within five (5) days after being notified of the appraised value of his shares, appeal to the Commissioner, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant.

(3) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the corporate action was concluded, for any reason, one (1) or more of the appraisers is not selected as provided in this section, or the appraisers fail to determine the value of dissenting shares, the Commissioner shall, upon written request of any interested party made within five (5) days after the expiration of the ninety-day period, cause an appraisal to be made which shall be final and binding upon all parties.

(d)(1) The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders.

(2) The expenses of the appraiser selected by the board of directors of the resulting bank shall be paid by the resulting bank.

(3) The expenses of the third appraiser shall be paid by and prorated among the dissenting stockholders and the resulting bank in such a manner as is determined by the Commissioner to be fair and equitable under the circumstances.

(e)(1) If the Commissioner is required to make the appraisal, his expenses in making the appraisal shall be paid by and prorated among the dissenting stockholders and the resulting bank in such a manner as is determined by the Commissioner to be fair and equitable under the circumstances.

(2) If the Commissioner is required to make a reappraisal, his expenses in making the reappraisal shall be paid by the appellant.

(f) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the corporate action was concluded, for any reason, one (1) or more of the appraisers are not selected as provided in this section or the appraisers fail to determine the value of dissenting shares, and if no written request to value the dissenting shares is filed with the Commissioner within five (5) days after the expiration of the ninety-day period, then all

dissenting stockholders who have failed to accept the offer of the resulting bank within the thirty-day period prescribed above shall be bound by the terms of the purchase or assumption, or merger.

(g) The amount due a dissenting stockholder under an accepted offer of the resulting bank or under the appraisal shall constitute a debt of the resulting bank which must be paid, if and when the purchase or assumption, or merger, is consummated, simultaneously with the surrender by the dissenting stockholder of his shares.

(h) Within ten (10) days after the corporate action, the resulting bank shall give written notice of the consummation of the corporate action to each dissenting stockholder who is entitled to receive in cash the fair value of his shares.

(i) The plan of merger, or the plan of purchase or assumption, shall provide for payment of or the manner of disposing of any shares of the resulting bank not taken by dissenting stockholders.

23-48-507. Continuation of corporate entity -- Use of old name.

(a) A resulting bank shall be the same business and corporate entity as each party to the merger or as the converting bank, with all the property, rights, powers, liabilities, and duties of each party to the merger or the converting bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank and by the charter and bylaws of the resulting bank.

(b) A resulting bank shall have the right to use the name of any party to the merger or of the converting bank whenever it can more conveniently do any act under that name.

(c) Any reference to a party to the merger or converting bank in a contract, will, or document, whether executed or taking effect before or after the merger or conversion, shall be deemed to refer and apply to the resulting bank if not inconsistent with the other provisions of the writing.

23-48-508. Resulting state bank -- Time for conformance with state law.

If a party to a merger or converting bank has assets which do not conform to the requirements of state law for the resulting state bank or if it carries on business activities which are not permitted for the resulting state bank, the Commissioner may permit a reasonable time in which to conform with state law.

23-48-509. Merger of wholly owned Arkansas bank holding company into state bank.

(a) With the approval of the Commissioner, any wholly owned Arkansas bank holding company that owns all of the outstanding shares of each class of the capital stock of a subsidiary

state bank may be merged into such bank to result in a state bank without the approval of the shareholders of either the wholly owned Arkansas bank holding company or the state bank, provided that the merger otherwise complies with the then-applicable law of this state.

(b) The board of directors of the wholly owned Arkansas bank holding company and the board of directors of the state bank shall adopt a plan of merger that sets forth:

(1) The names of the wholly owned Arkansas bank holding company and state bank; and

(2) The manner and basis of converting the shares of the wholly owned Arkansas bank holding company into shares of the state bank.

(c) The articles of merger containing the plan of merger, signed by each constituent corporation by its president or a vice president, shall be filed with the Commissioner in the manner required by law for the merger of state banks, and after the Commissioner's approval, with the Secretary of State in the manner required by law for the merger of business corporations.

(d) The articles of merger shall become effective upon the filing of the articles with the Secretary of State and, not more than sixty (60) days after the approval of the articles by the Commissioner, as may be specified in the articles as the time when the merger shall become effective.

23-48-510. Purchases or assumptions by a state bank.

(a)(1) With the approval of the Banking Board and the concurrence of the Commissioner and subject to the provisions of this subchapter and provided that no party to a proposed transaction has a de novo charter, a state bank may purchase all or a majority of the assets or assume all or a majority of the liabilities of another depository institution.

(2) The agreement of purchase and sale shall be authorized and approved by the boards of directors of the purchasing state bank and selling depository institution. The agreement shall be approved by the affirmative vote of the holders of at least a simple majority of the outstanding shares of the selling depository institution entitled to vote thereon, at a meeting called for the purpose in like manner as meetings to approve mergers are called, and an application containing such information as the Commissioner may require shall be filed with the Commissioner.

(3) The Commissioner shall cause the application to be investigated as soon as practicable and the application and the results of the investigation shall be forwarded to the Banking Board.

(4) The Banking Board shall hold a public hearing on the application pursuant to notice and procedure required for such applications.

(5) The Commissioner shall approve the application if, at the hearing, both the Commissioner and the Banking Board find that the proposed purchase or assumption:

(A) Provides adequate capital structure;

(B) Is fair;

(C) It is not contrary to public interest; and

(D) Adequately provides for dissenters' rights for the stockholders of any selling state bank.

(b)(1) With the approval of the Commissioner a state bank may assume less than a majority of the liabilities of another depository institution.

(2) The agreement of purchase and sale for the assumption of the liabilities referred to in subsection (b)(1) of this section shall be authorized and approved by the boards of directors of the assuming state bank and selling depository institution.

(3)(A) A state bank seeking to assume less than a majority of the liabilities of another depository institution shall file with the Commissioner an application containing such information as the Commissioner may require.

(B) The Commissioner shall have such application investigated as soon as practicable and shall approve the application if he is satisfied that the proposed assumption:

(i) Provides adequate capital structure;

(ii) Is fair; and

(iii) Is not contrary to public interest.

(c) No approval by the Commissioner or the Banking Board is required for the purchase by a state bank of less than a majority of the assets of another depository institution.

23-48-511. Commissioner's granting of new charter or branch facility in connection with failed institutions.

(a) Upon application of either individual incorporators or a bank holding company, the Commissioner is authorized to grant a state bank charter to such applicant immediately and without the approval of the Banking Board, if the Commissioner finds that the immediate formation of a new state bank will protect the depositors of a failed depository institution when the receiver of the failed depository institution has solicited bids for the sale of its deposits.

(b) The Commissioner is further authorized to grant more than one (1) state bank charter pursuant to solicitation of bids by the receiver of a failed depository institution should the receiver determine to solicit bids for deposits at separate offices or branches of a failed depository institution.

(c) Any state bank charter granted by the Commissioner pursuant to this section shall not be considered a de novo charter, as that term is defined in 23-45-102.

(d) The Commissioner may grant a branch bank application for a state bank to acquire the deposits and operate a branch of a failed depository institution regardless of state law limiting

branch locations should the application be submitted pursuant to the solicitation of bids by the receiver of a failed depository institution and should the Commissioner find the action would protect depositors of the failed depository institution. The Commissioner may grant an application for a state bank to acquire deposit liabilities without continued operation of a bank facility if the applicant has submitted an application therefore pursuant to this section.

23-48-512. Provisions when resulting state bank not to exercise trust powers.

Where a resulting state bank is not to exercise trust powers, the Commissioner shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank.

SUBCHAPTER 6 – REORGANIZATION THROUGH PLAN OF EXCHANGE

23-48-601. Authority to adopt plan of exchange -- Approval by Commissioner required.

(a)(1) A state bank may adopt a plan of exchange for shares of the outstanding capital stock held by its stockholders, for the consideration designated in this section to be paid or provided by a bank holding company which acquires the stock, in the manner provided in this part, by complying with the provisions of this part, subject to subsections (b)-(c) of this section.

(2) The plan of exchange may provide that the bank holding company, as the acquiring person, as consideration for the stock of the state bank may:

(A) Transfer shares of its capital stock;

(B) Transfer other securities issued by it;

(C) Pay cash;

(D) Pay or provide other consideration; or

(E) Pay or provide any combination of the foregoing types of consideration.

(b) No such plan of exchange shall be effectuated unless, in advance thereof, the plan has been filed with the Commissioner and approved in writing by him after notice and a hearing thereon. The Commissioner shall give approval within a reasonable time after the hearing if he finds the plan:

(1) Complies with the law;

(2) Is fair and equitable to the stockholders of the state bank involved;

(3) Provides a satisfactory means for disposing of shares of the state bank resulting from dissenting stockholders; or

(4) Would not substantially reduce the security of or service to be rendered to depositors or other customers of the state bank or any affiliate bank of the state bank or the bank holding company.

(c) No director, officer, agent, or employee of any party to an exchange of stock shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the plan of exchange.

(d) If the Commissioner does not approve the plan of exchange, the Commissioner shall notify the state bank in writing specifying the reasons therefore.

(e) For every plan of exchange filed with the Commissioner under subsection (b) of this section, there shall be paid to the Department by the state bank involved a filing fee equal to one-tenth of one percent (.1%) of the paid-up capital stock of the state bank. However, the fee shall in no case be less than five hundred dollars ($500) or more than one thousand dollars ($1,000). In addition, the state bank shall pay all expenses and costs of the Department incurred in connection with the plan of exchange and the hearing thereon including, but not limited to, travel expenses, mail and delivery charges, copying costs, and court reporters' fees. The Commissioner may by order reduce or waive the filing fee, but not the payment of the expenses and costs of the Department, if the Commissioner determines that the fee is excessive under the circumstances.

23-48-602. Procedure for adopting and filing plan of exchange.

(a) The directors, consisting of at least a majority, of a state bank and bank holding company who desire to adopt a plan of exchange pursuant to this subchapter shall adopt a plan of exchange, signed by them under their respective corporate seals, which shall prescribe and set forth:

(1) The terms and conditions of the plan of exchange;

(2) The mode of carrying it into effect;

(3) Provisions with respect to abandonment;

(4) The effective date of the exchange of shares or the method of determination thereof;

(5) The manner and basis of any cash payment or issuance or exchange of shares of stock or other securities of the bank holding company for shares of the state bank; and

(6) Such other details and provisions as are deemed necessary or desirable.

(b)(1) The plan of exchange shall be submitted to the stockholders of the state bank to be acquired at a meeting thereof called for that purpose.

(2) Notice shall be given of the time, place, and purpose of the meeting to each stockholder or member of record, whether entitled to vote or not.

(3) A copy of any proxy statement, or other solicitation materials provided to the shareholders of the state bank shall be filed with the commissioner on or before delivery to the shareholders.

(4)(A) At the meeting, the plan of exchange shall be considered by the stockholders entitled to vote thereon.

(B) A vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the plan.

(C) Unless otherwise provided in the state bank's articles of incorporation for voting on a plan of exchange, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of the state bank entitled to vote thereon.

(D) However, if any class of shares of the state bank is entitled to vote as a class on the plan, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of each class of shares entitled to vote as a class on the plan and the total outstanding shares entitled to vote on the plan.

(E) If the plan of exchange is approved by the stockholders of the state bank, then that fact shall be certified in the plan by the president or a vice president of the state bank.

(5) The plan so adopted and certified shall be signed by the president or a vice president of each party to the plan of exchange, and acknowledged before an officer authorized by law to take acknowledgment of deeds.

(c) The plan, adopted and certified as provided in subsection (b) of this section, shall be filed in duplicate originals with the Commissioner prior to the hearing on the plan and within ten (10) days following the approval of stockholders and, after approval thereof by the Commissioner as provided in 23-48-601 shall be taken and deemed to be the plan of exchange of the parties thereto.

(d) Any plan of exchange may be abandoned in conformity with the terms thereof as approved by the Commissioner provided, in that event, due notice of abandonment shall be forthwith transmitted to the stockholders of the state bank, and to the secretary of the bank holding company which are parties thereto, within ten (10) days of the abandonment in a manner and form prescribed or approved by the Commissioner.

23-48-603. Dissenting from plan of exchange.

(a)(1) The owner of shares of a state bank which were voted against a plan of exchange, and who has given notice in writing to the state bank, at or prior to the meeting of the stockholders approving the plan, that he dissents from the plan of exchange, shall be entitled to receive in cash the value of the shares held by him, if the plan of exchange is consummated and if the dissenting stockholder has delivered a written demand for payment to the state bank at any time within ten (10) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(2) This written demand for payment shall state the number and the class of shares owned by the dissenting stockholder. Any dissenting stockholder failing to make such a demand shall be bound by the terms of the plan of exchange.

(3) The state bank shall fix an amount which it considers to be not more than the fair market value of the shares of the state bank as of the date on which the stockholders' meeting authorizing the plan of exchange was concluded, which it will offer to pay dissenting stockholders entitled to payment in cash. Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his shares, the state bank shall give the dissenting stockholder notice of the amount it will pay for dissenting shares within twenty (20) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(4) Any dissenting stockholder may agree to accept the amount in lieu of purchasing the appraisal remedy set forth in subsection (b) of this section by delivering a written acceptance of the offer to the state bank within thirty (30) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(b)(1) The value of shares held by dissenting stockholders, entitled to receive in cash the value of the shares held by them, who do not accept the offer of the state bank within the thirty-day period set out in subdivision (a)(4) of this section shall be determined as of the date on which the stockholders' meeting authorizing the plan of exchange was concluded by three (3) appraisers:

(A) One (1) shall be selected by the dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by the dissenting stockholders;

(B) One (1) shall be selected by the board of directors of the state bank; and

(C) The third shall be selected by the two (2) so chosen.

(2) The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern. However, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided herein, the stockholder may, within five (5) days after being notified of the appraised value of his shares, appeal to the Commissioner. The Commissioner shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant.

(3) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of dissenting shares, the Commissioner shall, upon written request of any interested party made within five (5) days after the expiration of the ninety-day period, cause an appraisal to be made which shall be final and binding upon all parties.

(c)(1) The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders.

(2) The expenses of the appraiser selected by the board of directors of the state bank shall be paid by the state bank.

(3) The expenses of the third appraiser shall be paid by and prorated among the dissenting stockholders and the state bank in such manner as is determined by the Commissioner to be fair and equitable under the circumstances.

(d)(1) If the Commissioner is required to make the appraisal, the expenses of the Commissioner in making the appraisal shall be paid by and prorated among the dissenting stockholders and the state bank in such manner as is determined by the Commissioner to be fair and equitable under the circumstances.

(2) If the Commissioner is required to make a reappraisal, the expenses of the Commissioner in making the reappraisal shall be paid by the appellant.

(e) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as provided above or the appraisers fail to determine the value of dissenting shares, and, if no written request to value the dissenting shares is filed with the Commissioner within five (5) days after the expiration of the ninety-day period, then all dissenting stockholders who have failed to accept the offer of the state bank within the thirty-day period prescribed in subdivision (a)(4) of this section shall be bound by the terms of the plan of exchange.

(f) The amount due a dissenting stockholder under an accepted offer of the state bank or under the appraisal shall constitute a debt of the state bank which must be paid, if and when the plan of exchange is consummated, simultaneously with the surrender by the dissenting stockholder of his shares.

(g) Within ten (10) days after the plan of exchange is consummated, the state bank shall give written notice thereof to each dissenting stockholder who is entitled to receive in cash the fair value of his shares.

(h) The plan of exchange shall provide for payment of or the manner of disposing of any shares of the state bank not taken by dissenting stockholders.

23-48-604. Effect of exchange.

(a)(1) When the plan of exchange of shares as filed with the Commissioner and approved by the Commissioner under § 23-48-603 becomes effective in accordance with the terms of the plan, the exchange provided for therein shall be deemed to have been consummated, and each

shareholder of the state bank whose shares were acquired shall thereupon cease to be a shareholder of the state bank.

(2) The ownership of shares acquired in the plan of exchange, except shares payment of the value of which is required to be made under 23-48-603, hereinafter sometimes referred to as "dissenting shares," shall automatically vest in the bank holding company, as the acquiring person, without any physical transfer or deposit of certificates representing the shares.

(3) All dissenting shares shall be considered authorized, but no longer outstanding, shares of the state bank and may be disposed of in accordance with the provisions of the plan of exchange or as otherwise approved by the Commissioner.

(b)(1) Certificates representing shares acquired in the plan of exchange of the state bank prior to the plan of exchange becoming effective, except certificates representing dissenting shares, shall, after the plan of exchange becomes effective, represent:

(A) Shares of the capital stock or other securities of the bank holding company to be issued in exchange for shares of the state bank; and

(B) The right, if any, to receive cash or other consideration upon terms specified in the plan of exchange.

(2) However, the plan of exchange may specify that all such certificates shall, after the plan of exchange becomes effective, represent only the right to receive shares of stock or other securities issued by the bank holding company, cash, or a combination thereof upon such terms as specified in the plan of exchange.

23-48-605. State bank and holding company to remain separate -- Nonliability of directors, officers, etc.

The state bank and the bank holding company shall, in all respects, remain separate and distinct entities with neither entity having any liability to the creditors or depositors, if any, or the stockholders of the other, or for any acts or omissions of the officers, directors, stockholders, or representatives of the other, other than obligations which may be expressly provided for in the plan of exchange.

SUBCHAPTER 7 – BRANCH OFFICES

23-48-701. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Full service branch" means a banking facility separate from the main office of the bank at which all lawful banking activities may be conducted as fully as in the main office;

(2) "Supervisory banking authority" means the Commissioner for state banks and the United States Comptroller of the Currency for national banks.

23-48-702. Establishment of full service branches and limited purpose offices -- Locations.

(a)(1) No bank shall engage in core banking activities, receiving deposits, paying checks, or lending money, at any location other than at a main banking office or full service branch bank except as otherwise permitted by law.

(2)Unless otherwise restricted by applicable law, banks may engage in permitted activities other than core banking activities at a main office, any branch or a limited purpose office.

(b)(1) Any Arkansas bank may establish a full service branch provided that its supervisory banking authority approves its application for the full service branch.

(2) Any registered out-of-state bank may establish a full service branch provided that the bank supervisory agencies with jurisdiction over such bank approve its application for a full service branch.

(3) Full service branches may be established as follows:

(A) An Arkansas bank may establish full-service branches anywhere within the state in which the establishing bank's main banking office is located;

(B) A state bank which relocates its main banking office may continue to use its former main banking office location as a full service branch so long as the use as a banking facility is uninterrupted;

(C) Following the consummation of any bank merger transaction authorized under the Arkansas Banking Code of 1997, the resulting bank may establish, acquire, or operate additional branches at any location in the State of Arkansas, or in the case of an Arkansas bank, at any location within another state, where the main banking office of the bank which was a party to the merger could have established, acquired, or operated a full service branch under applicable law if such bank had not been a party to the merger transaction, provided that full-service branches shall not be established if one (1) or more of the banks is an Arkansas bank which has a de novo charter;

(D) An Arkansas Bank possessing a capital and surplus of one million dollars ($1,000,000) or more may file an application with the Bank Commissioner for permission to exercise, upon such conditions as the commissioner may prescribe, the power to establish branches in foreign countries or dependencies or insular possessions of the United States and to act as fiscal agent for any governmental entity; and

(E) Notwithstanding any other provisions of state law regarding locations of full-service branches, any federal or state savings bank or association chartered and in operation prior to the effective date of this 2001 act, with branches in operation in one or more states, may convert to a state bank in accordance with § 23-48-504 and may retain its branches, both in-state and out-of-state, as branches of the state bank.

(c) None of the provisions of this section which restrict the locations in which full service branches may be established shall be effective in emergency instances in which the purchase or assumption of the assets and liabilities of a failed bank becomes necessary due to state or federal regulatory action.

(d)(1) Any state bank may file an application with the Commissioner to relocate any existing full service branch to another location then authorized by law.

(2) A fee of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500), as set by department regulation, shall accompany the application.

(3) The application shall contain such information concerning the new location as the Commissioner may require.

(4) The Commissioner shall approve such relocation unless it is determined the relocation is not economically feasible or will not serve the public convenience and necessity.

(e)(1) Any bank may establish a limited purpose office anywhere in the state to conduct non-core banking activities upon satisfaction of the notice requirement set forth in this subsection.

(2) As to each limited purpose office which a bank proposed to establish or use, the bank shall give not less than thirty (30) days' prior written notice of its intention to establish or use the limited purpose office to:

(A) the Commissioner, in the case of a state bank, or

(B) the home state regulator, in the case of a registered out-of-state bank which is an out-of-state state-chartered bank, or

(C) the Comptroller of the Currency, in the case of a national bank.

(3) The notice shall be in such form as may be required by the regulatory authority with which the notice is to be filed and shall include the following information"

(A) The location and a general description of the surrounding area;

(B) Whether the location will be owned or leased;

(C) The non-core banking activities to be conducted;

(D) An estimate of the initial cost of the limited purpose office; and

(E) Such other relevant information as may be required by the regulatory authority.

23-48-703. Establishment of full service branch offices -- Procedure.

(a) The Commissioner shall have the authority to approve the application of a state bank to establish a full service branch, if he shall find upon investigation that the establishment of the branch is economically feasible and will serve the public convenience and necessity.

(b) The Commissioner shall require the sponsor of a branch bank application to pay a filing fee of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) as may be set by Department regulations.

(c) The sponsor of a branch bank application shall give notice of the application at or prior to filing with the commissioner by publication in a newspaper of statewide circulation.

(d)(1) Any formal protest to a branch bank application must be received in writing detailing the reasons for protest within fifteen (15) days of the actual filing of the application.

(2) Each person that files formal written protest to a branch bank application shall be required to pay a fee of not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000), as set by Department regulations, which fee shall accompany the formal written protest and must also be received by the Commissioner’s office within fifteen (15) days of the actual filing of the application.

(e) An adjudicatory or administrative hearing shall not be required on a branch bank application.

(f) The Commissioner’s decision on a branch bank application will be in the form of final findings of fact, conclusions of law, and an order given by the Commissioner within a reasonable period of time following the expiration of the fifteen (15) day formal protest period. The findings of fact shall include findings that:

(1) The establishment of the branch is economically feasible; and

(2) Public convenience and necessity will be promoted by the establishment of the proposed full service branch.

(g) Following adoption of the Commissioner’s official findings of fact, conclusions of law, and order, an applicant or official protestant shall have thirty (30) days in which to appeal the Commissioner’s order to the appropriate circuit court.

23-48-704. Pre-existing facilities.

Any bank may, at its option, operate any branch office, teller's window, or other banking facility which is separate from the main office of the bank and in operation on June 30, 1988, as a full service branch or a customer-bank communications terminal.

23-48-705. Notice of termination of full service branch.

When a full service branch has once been established under any provision of this subchapter or any prior act, the operation thereof shall not be discontinued or the facility closed unless ninety (90) days prior notice of intention to terminate the operation is given in writing to the supervisory banking authority.

SUBCHAPTER 8 – CUSTOMER BANK COMMUNICATION TERMINALS

23-48-801. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Customer-bank communication terminal", or "CBCT," means any electronic device or facility, other than a point of sale terminal, together with all associated equipment, structures, and systems, through or by means of which a customer and a bank may engage in any banking transaction, whether transmitted to the banking institution instantaneously or otherwise. This definition specifically includes automatic teller machines.

(A) Banking transactions include, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to an authorized line of credit, receiving payments payable at the bank or otherwise, and transmitting instructions to receive, transfer, or pay funds for a customer's benefit.

(B) However, nothing in this subdivision (1) shall be deemed to apply to devices used by banks to effect transactions of any nature with other banks;

(2) "Point-of-sale terminal" means electronic or mechanical equipment located in nonbank business outlets to record or execute, directly with a bank, transactions occurring as a result of the sale of goods or services, provided such equipment neither dispenses cash nor accepts deposits. For purposes of this definition, the crediting of an account for merchandise returned or for services previously provided shall not be considered as an acceptance of a deposit;

(3) "Supervisory banking authority" means the Commissioner and the Banking Board for state banks and the United States Comptroller of the Currency for national banks.

23-48-802. Location of CBCTs.

A bank, individually or jointly with one (1) or more other banks in the state, may establish, maintain, and use one (1) or more customer-bank communication terminals anywhere in this state, and in any location in any one or more other states if permitted by the applicable law of such other state.

23-48-803. Notice of establishment of terminal.

(a) As to any and each CBCT which a state bank proposes to establish, the state bank shall notify the commissioner of the establishment and location of the terminal.

(b) No notice need be given for any device or machine which:

(1) Is used solely to verify a customer's credit for purposes of check cashing or of a credit card transaction; or

(2) Is a part of a bank's authorized main office or branch.

(c) No hearing or permit shall be required to establish or use a CBCT.

23-48-804. Out-of-state banks.

Any out-of-state bank may establish, maintain, and operate a customer-bank communications terminal anywhere in this state. Out-of-state state-chartered bank, other than registered out-of-state banks shall file the notice set forth in 23-48-803 with the Commissioner. Registered out-of-state banks shall satisfy all filing requirements under the regulations of their home state regulator concerning the establishment, maintenance and operations of out-of-state CBCTs. Nothing in this section shall limit, restrict or prohibit any Federal Reserve Bank or branch thereof from operating any electronic funds transfer system in this state.

23-48-805. Point-of-sale terminals not subject to regulation by the Commissioner.

A point of sale terminal, as defined in this part, shall not be subject to the regulation or supervision of the Commissioner.

23-48-806. Interconnected terminals.

In order to permit the transaction of any banking function authorized under this subchapter, between a bank and its customers, any bank, pursuant to the provisions of this subchapter, may be interconnected with (I) one or more CBCTs, including out-of-state CBCTs, established by one or more other banks and (ii) one or more electronic funds transfer systems or computer systems, regardless of the location of the banks, CBCTs, electronic funds transfer systems or computer systems. However, nothing in this section shall be construed as permitting

any out-of-state bank, other than a registered out-of-state bank, to conduct banking business in this state unless expressly permitted by the Arkansas Banking Code.

23-48-807. Persons attending terminals -- Verification of transactions.

(a) Except for CBCTs located on the premises of the main office or a branch of a bank, a CBCT shall be unattended or attended by persons not employed by the bank utilizing such CBCT. However, employees or agents of the bank or its agents may install, maintain, repair, and service such terminal and, for a reasonable period of time after the opening of any such terminal, may provide an employee to instruct and assist customers in the operation of the terminal.

(b) All transactions initiated through a CBCT shall be subject to verification by the bank, either by direct wire transmission or otherwise.

23-48-808. Privacy of account information.

A bank using CBCTs shall establish and maintain reasonable safeguards designed to protect the privacy and confidentiality of account information.

23-48-809. Approval for expanded powers of state banks.

At such time as national banks having their main offices in this state are permitted to establish and use CBCTs in places or for transactions not permitted under this part, all state banks shall have the powers permitted national banks with respect to the establishment and use of CBCTs, provided that the Commissioner authorizes such use.

23-48-810. Sharing of communication terminals.

(a)(1) An agreement to share a customer-bank communication terminal, as defined by 23-48-801, shall not prohibit, limit, or restrict the right of a bank from charging a customer-bank communication terminal usage fee.

(2) The usage fee shall not exceed two dollars ($2.00) or two percent (2%) of the gross amount of the transaction, whichever is less, and may only be imposed if imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the usage fee.

(b)(1) For purposes of this section, “usage fee” is a fee charged by a customer-bank communication terminal owner on transactions by a holder of a foreign bank card.

(2) For purposes of this section, a “foreign bank card” is a card eligible for use in a customer-bank communication terminal, which card is not issued by the customer-bank communication terminal owner.

SUBCHAPTER 9 – INTERSTATE BANK MERGERS AND BRANCHING

23-48-901. Definitions

As used in this subchapter, unless the context otherwise requires:

(1) "Acquisition of an interstate branch" means the acquisition of a branch located in a host state as the initial entry of an out-of-state bank into the host state, without engaging in an interstate merger transaction as defined in 23-45-102.

(2) "Control" shall be construed consistently with the provisions of 12 U.S.C. 1841(a)(2).

(3) "De novo interstate branch" means a bank branch located in a host state which (i) is the initial entry of an out-of-state bank into the host state, (ii) is originally established by the bank as a branch and (iii) does not become a branch of the bank as a result of an interstate merger transaction.

23-48-902. Authority of State Banks to Establish Interstate Branches by Merger.

With the prior approval of the Banking Board and the Commissioner, a state bank may establish, maintain and operate one or more branches in one or more states other than Arkansas pursuant to an interstate merger transaction in which the state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant state bank shall file an application on a form prescribed by the Commissioner and pay the fee prescribed by 23-46-404. The applicant shall also comply with the applicable provisions of Subchapter 5, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-501 et seq.). If the Banking Board and Commissioner, after a hearing, find that:

(1) The proposed merger provides adequate capital structure;

(2) The terms of the merger agreement are fair;

(3) The merger is not contrary to the public interest;

(4) The proposed merger adequately provides for dissenters' rights; and

(5) The requirements of all applicable state and federal laws have been complied with, then the Banking Board and the Commissioner shall approve the interstate merger transaction and the operation of branches outside of Arkansas by the state bank. Such an interstate merger transaction may be consummated only after the applicant has received the written approval of the Banking Board and the Commissioner.

23-48-903. Interstate Merger Transactions and Branching Permitted.

One or more Arkansas banks, provided no such Arkansas bank has a de novo charter, may enter into an interstate merger transaction with one or more out-of-state banks under this

subchapter in which the out-of-state bank is the resulting bank, and the out-of-state bank may thereafter maintain and operate the branches in Arkansas of any Arkansas bank that was a party to the interstate merger transaction, provided that the conditions and filing requirements of this subchapter and Subchapter 10, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-1001 et seq.) are met.

23-48-904. De Novo Interstate Branches or Acquisition of Interstate Branches Prohibited.

(a) No state bank may establish or maintain a de novo interstate branch or engage in a transaction involving the acquisition of an interstate branch.

(b) No out-of-state bank may establish or maintain a de novo interstate branch in Arkansas or engage in a transaction involving the acquisition of an interstate branch in Arkansas.

23-48-905. Notice and Filing Requirements.

Any out-of-State bank that will be the resulting bank pursuant to an interstate merger transaction involving a state bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the Commissioner and pay the filing fee, if any, required by the Commissioner. Any state bank which is a party to such interstate merger transaction shall comply with Subchapter 5, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-501 et seq.) and with all other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with applicable requirements of Subchapter 10, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-1001 et seq.).

23-48-906. Powers; Additional Branches.

(a) An out-of-state state-chartered bank which establishes and maintains one or more branches in Arkansas under this subchapter may conduct any activities at such branch or branches which are authorized under the laws of Arkansas for state banks.

(b) A state bank may conduct any activities at any branch outside Arkansas which are permissible for a bank chartered by the host State in which the branch is located; provided that the Commissioner may prohibit any state bank from engaging in any activity not expressly allowed by the Arkansas Banking Code, if the Commissioner determines, by order or regulation, that the involvement of out-of-state branches of state banks in such activities would threaten the safety or soundness of state banks.

(c) An out-of-state bank that has established or acquired a branch in Arkansas under this subchapter may establish or acquire additional branches or limited purpose offices in Arkansas to

the same extent that any Arkansas bank may establish or acquire additional branches or limited purpose offices in Arkansas under applicable state and federal law.

23-48-907. Examinations; Periodic Reports; Cooperative Agreements; Fees.

(a) To the extent consistent with subsection (c) of this section, the Commissioner may make such examinations of any branch established and maintained in Arkansas pursuant to this subchapter by an out-of-state state-chartered bank as the Commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code shall apply to such examinations.

(b) The Commissioner may prescribe requirements for periodic reports regarding any registered out-of-state bank that operates a branch in Arkansas. The required reports shall be provided by such bank. Any reporting requirements prescribed by the Commissioner under this subsection (b) shall be (i) consistent with the reporting requirements applicable to state banks and (ii) appropriate for the purpose of enabling the Commissioner to carry out his responsibilities under this subchapter.

(c) The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Arkansas of an out-of-state state-chartered bank, or any branch of a state bank in any host state, and the Commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his own examinations or investigations.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or an out-of-state state-chartered bank operating a branch in this state pursuant to this subchapter to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under 19-11-232.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Arkansas of an out-of-state state-chartered bank or any branch of a state bank in any host state; provided that the Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out his responsibilities under this subchapter or to ensure compliance with the laws of this state; but provided further, that, in the case of an out-of-state state-chartered bank, the Commissioner shall recognize the exclusive

authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state-chartered bank that maintains one or more branches in Arkansas may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the Arkansas Banking Code and regulations of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

23-48-908. Enforcement.

If the Commissioner determines that a branch maintained by an out-of-state state-chartered bank in Arkansas is being operated in violation of any provision of the laws of Arkansas, or that such branch is being operated in an unsafe or unsound manner, the Commissioner shall have the authority to take all such enforcement actions as he would be empowered to take if the branch were a state bank; provided, that the Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state-chartered bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

23-48-909. Regulations.

The Commissioner, with the approval of the Banking Board, may promulgate such regulations as he determines to be necessary or appropriate in order to implement the provisions of this subchapter.

23-48-910. Notice of Subsequent Merger.

Each registered out-of-state bank that has established and maintains a branch in this state pursuant to this subchapter, shall give at least thirty (30) days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, which requires that an application be filed pursuant to the Federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. 1817(j), or the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841 et seq., or any successor statutes thereto.

23-48-911. Severability.

If any provision of this subchapter or the application of any such provision is found by any court of competent jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions hereof shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

SUBCHAPTER 10 – REGISTRATION OF OUT-OF-STATE BANKS

23-48-1001. Application for certificate of authority.

(a) On or before the consummation of an interstate merger transaction in which the resulting bank is an out-of-state bank which will operate branches in this state, the resulting bank shall apply for a certificate of authority to transact banking business in this state by delivering an application to the Commissioner for filing. The application must set forth:

(1) The name of the bank;

(2) The name of the state or country under whose law it is chartered;

(3) Its date of formation and period of duration;

(4) The street address of its principal office;

(5) The address of its registered office in this state and the name of its registered agent at that office; and

(6) The number and par value, if any, of shares of the bank's capital stock owned or to be owned by residents of this state.

(b) The bank shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the bank supervisory agency which chartered the bank or other official having custody of the corporate records of banking institutions in the state or country under whose law it is chartered.

23-48-1002. Amended certificate of authority.

(a) A registered out-of-state bank shall apply for an amended certificate of authority from the Commissioner if it changes:

(1) The name of the bank;

(2) The period of its duration; or

(3) The state or country under which it is chartered.

(b) The requirements of 23-48-1001 for applying for an original certificate of authority shall also apply to applications for obtaining an amended certificate of authority hereunder.

23-48-1003. Effect of certificate of authority.

(a) A certificate of authority authorizes the out-of-state bank to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) An out-of-state bank with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this

chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a state bank of like character.

(c) This chapter does not authorize this state to regulate corporate governance matters of an out-of-state bank authorized to transact business in this state.

23-48-1004. Registered office and registered agent of out-of-state bank.

Each registered out-of-state bank must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A state bank, domestic corporation or not-for-profit corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

23-48-1005. Change of registered office or registered agent of out-of-state bank.

(a) A registered out-of-state bank may change its registered office or registered agent by delivering to the Commissioner for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any out-of-state bank for which he is the registered agent by notifying the bank in writing of the change and signing (either manually or in facsimile) and delivering to the Commissioner for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the bank has been notified of the change.

23-48-1006. Resignation of registered agent of out-of-state bank.

(a) The registered agent of an out-of-state bank may resign his agency appointment by signing and delivering to the Commissioner for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Commissioner shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Commissioner shall mail the other copy to the out-of-state bank at its principal office address shown in its most recent annual franchise tax report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

23-48-1007. Service on out-of-state banks.

(a) The registered agent of a registered out-of-state bank is the bank's agent for service of process, notice, or demand required or permitted by law to be served on the out-of-state bank.

(b) A registered out-of-state bank may be served by registered or certified mail, return receipt requested, addressed to the secretary or cashier of the out-of-state bank at its principal office shown in its application for a certificate of authority or in its most recent annual franchise tax report if the out-of-state bank:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under 23-48-1008; or

(3) Has had its certificate of authority revoked under 23-48-1010.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the out-of-state bank receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the out-of-state bank; or

(3) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a registered out-of-state bank.

23-48-1008. Withdrawal of out-of-state bank.

(a) A registered out-of-state bank may not withdraw from this state until it obtains a certificate of withdrawal from the Commissioner.

(b) A registered out-of-state bank may apply for a certificate of withdrawal by delivering an application to the Commissioner for filing. The application must set forth:

(1) The name of the out-of-state bank and the name of the state or country under whose law it is chartered;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Commissioner as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the Commissioner may mail a copy of any process served on him under subdivision (3) of this subsection; and

(5) A commitment to notify the Commissioner in the future of any change in its mailing address for a period of time to be determined by the Commissioner.

(c) After the withdrawal of the bank is effective, service of process on the Commissioner under this section is service on the out-of-state bank. Upon receipt of process, the Commissioner shall mail a copy of the process to the out-of-state bank at the mailing address set forth under subsection (b) of this section.

23-48-1009. Grounds for revocation.

The Commissioner may commence a proceeding under 23-48-1010 to revoke the certificate of authority of a registered out-of-state bank if:

(1) The out-of-state bank does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(2) The out-of-state bank does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) The out-of-state bank is without a registered agent or registered office in this state for sixty (60) days or more;

(4) The out-of-state bank does not inform the Commissioner under 23-48-1005 or 23-48-1006 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;

(5) The out-of-state bank, or an officer, director or employee thereof, is found to be violating federal banking laws or regulations, violating the banking laws of this state or Department regulations, violating any regulatory agreement, or jeopardizing the safety and soundness of the out-of-state bank.

(6) An incorporator, director, officer, or agent of the out-of-state bank signed a document he knew was false in any material respect with intent that the document be delivered to the Commissioner for filing; or

(7) The Commissioner receives a duly authenticated certificate from the bank supervisory agency or other official having custody of the corporate records of banking institutions in the state or country under whose law the out-of-state bank is chartered stating that it has been dissolved or disappeared as the result of a merger.

23-48-1010. Procedure for and effect of revocation.

(a) If the Commissioner determines that one (1) or more grounds exist under 23-48-1009 for revocation of a certificate of authority, he shall serve the out-of-state bank with written notice of his determination under 23-48-1007.

(b) If an out-of-state bank does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Commissioner that each ground determined by the Commissioner does not exist within thirty (30) days after service of the notice is perfected under 23-48-1007, the Commissioner may revoke the out-of-state bank's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Commissioner shall file the original of the certificate and serve a copy on the out-of-state bank under 23-48-1007.

(c) The authority of an out-of-state bank to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Commissioner's revocation of an out-of-state bank's certificate of authority appoints the Commissioner the out-of-state bank's agent for service of process in any proceeding based on a cause of action which arose during the time the out-of-state bank was authorized to transact business in this state. Service of process on the Commissioner under this subsection is service on the out-of-state bank. Upon receipt of process, the Commissioner shall mail a copy of the process to the secretary or cashier of the out-of-state bank at its principal office shown in its most recent annual franchise tax report or in any subsequent communication received from the bank stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of an out-of-state bank's certificate of authority does not terminate the authority of the registered agent of the bank.

23-48-1011. Appeal from revocation.

(a) An out-of-state bank may appeal the Commissioner's revocation of its certificate of authority to the Pulaski County Circuit Court within thirty (30) days after service of the certificate of revocation is perfected under 23-48-1007. The out-of-state bank appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Commissioner's certificate of revocation.

(b) The court may order the Commissioner to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings."

CHAPTER 49

DISSOLUTION AND LIQUIDATION

23-49-101. Definitions.

As used in this Chapter:

(1) "Chancery Court" means the court that the Department has filed the notice of possession with, under this Chapter. The Chancery Court will make a determination for sale of assets only and not a determination of whether or not to take charge of an institution under the Commissioner's supervision;

(2) "Federal deposit insurance agency" means an agency or instrumentality of the United States that insures to any extent the deposits of a depository institution, including the Federal Deposit Insurance Corporation ("FDIC");

(3) "Insolvent institution" means a state bank or subsidiary trust company that:

(A) Is, in the opinion of the Commissioner, incapable of or unlikely to meet the demands of creditors or depositors on a timely basis;

(B) Has liabilities in excess of the total value of its assets as determined by the Commissioner; or

(C) Has been advised by the FDIC of the FDIC's intention to withdraw deposit insurance coverage;

(4) "Institution" means a state bank or subsidiary trust company.

23-49-102. Department taking possession -- Procedure.

(a) In addition to the powers conferred upon the Commissioner and the Department, the Commissioner may take possession of the business and property of any institution which the Commissioner supervises whenever it appears to the Commissioner that the institution:

(1) Is insolvent or in imminent danger of insolvency;

(2) Is in an unsafe or unsound condition;

(3) Has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;

(4) Has concealed or refused to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate federal financial institution regulatory agency or of the Department;

(5) Has substantially dissipated assets or earnings due to:

(A) any violation of any law or regulation; or

(B) an unsafe or unsound practice;

(6) Has requested through its board of directors that the Department take possession for the benefit of depositors, other creditors, shareholders, or other persons;

(7) Has an impairment of its capital as is currently required to be maintained by the Department;

(8) Has neglected or refused, for a period of at least thirty (30) days, to comply with the terms of a final order of the Department or final order of a federal financial institutions regulatory agency, essential to preserve the solvency of the institution;

(9) Has failed to pay the fees charged by the Department under 23-46-509 after due notice of the amount of the fee has been given.

(b) Whenever it appears to the Department that any one (1) or more of the conditions in subsection (a) exists as to any institution, the Department shall cause a certified notice to be served on the president or other executive officer actively in charge of the institution and demand possession of the business, property, and records of the institution from the officer citing the reasons for such demand from subsection (a) of this section. The institution shall immediately surrender the possession to the Commissioner.

23-49-103. Injunction against Commissioner.

(a) Whenever any institution of whose business, property and records the Commissioner has taken possession deems itself aggrieved thereby, it may, at any time within ten (10) days after taking of possession, apply to the Chancery Court to enjoin further proceedings.

(b) After notifying the Commissioner to show cause why further proceedings should not be enjoined and after hearing the allegations and proof of the parties and determining the facts, the court may, upon the merits, dismiss the application or enjoin the Commissioner from further proceedings and direct him to surrender the business, property, and records to the institution.

23-49-104. When possession terminates.

When the Commissioner has taken possession of the business and property of an institution under the provisions of 23-49-102, the Commissioner shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this Chapter, unless the institution has undertaken the voluntary liquidation of its affairs under this Chapter or the Federal Deposit Insurance Corporation has been appointed receiver.

23-49-105. Notice of possession.

(a) Immediately upon taking possession of the business and property of any institution under 23-49-102, the Commissioner shall give notice by:

(1) Causing the notice to be served upon the president or other executive officer actively in charge of the business of the institution;

(2) Posting the notice at the main entrance at each office of the institution;

(3) Filing the notice in the office of the Chancery Court in the county where the main office of the institution is located;

(4) Causing the notice to be mailed to all correspondent banks of the institution; however, if the Commissioner fails to provide such notice, the Commissioner shall incur no liability thereon; and

(5) Causing the notice to be published by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation.

(b) Upon the filing of the notice under subsection (a), the clerk shall:

(1) Note the filing of the notice upon the records of the court; and

(2) Enter the cause as an action upon the dockets of the court under the name and style of "In the matter of the liquidation of _____ (inserting the name of the institution)."

(c) The court shall not have authority to review the action of the Commissioner in taking possession of the institution's business, property, and records; however, the court may hear and determine all issues and matters pertaining to or connected with the liquidation of the institution, including:

(1) The sale of assets or assumption of liabilities of the institution; and

(2) The amount of the compensation and necessary expenses of any special representative, assistant, accountant, agent, or attorney employed by the Commissioner, or the receiver appointed by the Commissioner, as set forth in this Chapter.

(d) All entries, orders, judgments, and decrees of the court in connection with the liquidation proceedings shall be filed and entered of record in the cause of action.

(e) The rights and liabilities of an institution and of its creditors, depositors, shareholders, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the delivery of the notice of possession to the president or other executive officer actively in charge of the business of the institution. In the case of mutual debts or mutual credits of equal priority between the institution and another person, the credits and debts shall be set off and the balance only shall be allowed or paid. The right to setoff shall be determined as of the date of delivery of the notice of possession of the institution to the president or other executive officer actively in charge of the business of the institution.

23-49-106. Appointment of receiver -- Restrictions on proceedings, liens or credits.

(a) The Commissioner may appoint the appropriate federal deposit insurance agency as the receiver of the closed institution. If the federal deposit insurance agency accepts the appointment, the Commissioner shall file notice with the court of the appointment. If the Federal Deposit Insurance Corporation accepts appointment as receiver, it shall not be required to post any bond.

(b) Upon appointment as receiver, title to all assets of the institution vests in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the Commissioner shall act as receiver and have all of the powers and duties of a receiver as provided in this Chapter.

(c) Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of any institution is vested in the receiver appointed under this section, and no other receiver, assignee, trustee, or liquidating agent shall be appointed by any court or any other person.

(d) After the Commissioner has taken possession of the business and property of any institution, no suit, action, or other proceeding at law or in equity shall be commenced or prosecuted against the institution upon any debt, obligation, claim, or demand. All such claims may be brought against the receiver.

(e) No person holding any of the property or credits of the institution shall have any lien or charge against the property or credits for any payment, advance, or clearance made after the Commissioner has taken possession. A lien shall not attach to any of the assets or property of the institution by reason of the entry of any judgment recovered against the institution after the Commissioner has taken possession of its business and property.

23-49-107. Powers of receiver.

The receiver of a closed institution may do the following:

(1) Take possession of all books, records, and assets of the institution;

(2) Collect all debts, claims, and judgments belonging to the institution and do such other acts as are necessary to preserve and liquidate its assets;

(3) Execute in the name of the institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver;

(4) Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the institution;

(5) Exercise any and all existing fiduciary functions of the institution as of the date of appointment as receiver;

(6) Borrow money as necessary in the liquidation of the institution and secure the borrowings by the pledge or mortgage of assets. The repayment of money borrowed under this subsection and interest thereon shall be considered an expense of administration under 23-49-111;

(7) Abandon or convey title to any holder of a mortgage, deed of trust, security interest, or lien against property in which the institution has an interest whenever the receiver determines that to continue to claim such interest is burdensome and of no advantage to the institution, its depositors, creditors, or shareholders;

(8) Repudiate any leases or executory contracts to which the institution is a party in accordance with 23-49-112;

(9) Subject to the approval of the court:

(A) Sell any and all real and personal property to compromise any debt, claim, or judgment due from the institution and discontinue any action or other proceedings pending;

(B) Pay off all mortgages, deeds of trust, security agreements, and liens upon any real or personal property belonging to the institution and purchase at judicial sale or at sale authorized by court order, any real or personal property in order to protect the institution's equity in that property;

(C) Sell in bulk the assets and liabilities of the institution.

23-49-108. Sale of Assets - Assumption of deposit liabilities by new institution.

The receiver may, with ex parte approval of the chancery court, sell all or any part of the institution's assets to one or more other state or federally chartered depository institution or to a federal deposit insurance agency in its corporate capacity. The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered depository institution, assigning any part or all of the assets of the institution as security for the loan.

23-49-109. Presentation of claims - Notice of claims procedure - Rejection of claims - Statute of limitations.

(a) All parties having claims against the closed institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the Commissioner has taken possession.

(b) The receiver shall cause notice of the claims procedures prescribed by this section to be:

(1) Published once a month for three (3) consecutive months in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation; and

(2) Mailed to each person whose name appears as a creditor upon books of the institution at the person's last address of record.

(c) Within one hundred eighty (180) days following receipt of claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed. Any claimant whose claim has been rejected by the receiver may petition the chancery court for a hearing on the claim within sixty (60) days from the date the claim was rejected.

(d) The period described in subsection (a) of this section may be extended by written agreement between the claimant and the receiver.

(e)(1) The claim of any party against the closed institution shall be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of the sixty (60) day period described in subsection (c) hereof, if the party having such claim fails to:

(A) Request an administrative review of any claim by the receiver in accordance with proper procedure; or

(B) File suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of said sixty (60) day period.

(2) Such disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

23-49-110. Claims filed after 180 day claim period.

Any claims filed after the one hundred eighty (180) day claim period prescribed by 23-49-109 and subsequently accepted by the receiver or allowed by the chancery court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed.

23-49-111. Payment of claims.

(a) All claims against the institution's estate, proved to the receiver's satisfaction or approved by the chancery court, shall be paid in the following order:

(1) Administration expenses;

(2) Claims given priority under other provisions of state or federal law;

(3) Deposit obligations;

(4) Other general liabilities;

(5) Debt subordinated to the claims of depositors and general creditors;

(6) Equity capital securities.

(b) Administrative expenses shall include:

(1) Court costs;

(2) Compensation of each regular officer or employee of the receiver for the time actually devoted by the officer or employee to the liquidation of the institution at an amount not to exceed the compensation paid to the officer or employee for the performance of his regular duties;

(3) Actual expenses of each regular officer and employee necessarily incurred in the performance of his duties;

(4) Compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver; and

(5) If the Commissioner is acting as receiver, such reasonable general overhead expenses as may be incurred by the Commissioner in the liquidation of the affairs of the institution, which shall be ascertained, determined, and fixed by the Commissioner.

(c) Interest on any claims shall not be paid until all claims within the same class have received the full principal amount of claim.

23-49-112. Rejection of contracts and leases.

(a) Within one hundred eighty (180) days after the date that the Commissioner has taken possession, the receiver may, at his election, reject:

(1) Any executory contracts to which the closed institution is a party without any further liability to the closed institution or the receiver; and

(2) Any obligation of the institution as a lessee of real or personal property.

(b) The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination.

23-49-113. Subrogation of federal deposit insurance agency to rights of depositors.

Whenever a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed institution, the federal deposit insurance agency, whether or not it acts as receiver, shall be subrogated by operation of law to all rights of depositors against the closed institution relating to claims for deposits so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed institutions.

23-49-114. Appointment of successor to fiduciary and representative proceedings.

(a) The receiver, with the approval of the chancery court, may appoint one or more successors to any or all of the rights, obligations, assets, deposits, agreements, and trusts held by the closed institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. Such approval may be obtained in connection with the proceedings authorized under 23-49-108. A successor's duties and obligations begin upon appointment to the

same extent binding upon the closed institution and as though the successor had originally assumed the duties and obligations. Specifically, a successor shall be appointed to administer trusteeships, administrations, executorships, guardianships, agencies, and other fiduciary or representative proceedings to which the closed institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

(b) This section shall not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.

(c) Within thirty (30) days after appointment, a successor shall give written notice, insofar as practical, that the successor has been appointed in accordance with applicable law to all interested parties named in:

(1) The books and records of the closed institution; and

(2) Trust documents held by it.

23-49-115. Notice concerning safekeeping and safe deposit boxes.

(a)(1) The receiver shall cause notice to be mailed to the last address of record to the owners of any personal property in the possession of or held by a closed institution for safekeeping, and to all lessees of safe deposit boxes.

(2) The notice shall require the intended recipients to appear and assert their claims to the property within sixty (60) days from the date of the notice.

(b) Subject to approval of the chancery court, the receiver shall make such agreements or arrangements as may be necessary for the disposition of property held by the closed institution for safekeeping and the contents of safe deposit boxes, and for the termination of any leases or other contracts relating to such property or contents.

23-49-116. Actions for enforcement of rights, demands or claims vested in an institution or its shareholders or creditors.

Notwithstanding any other provision of state law, the receiver may, within five (5) years from the date of closing of the institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the institution.

23-49-117. Contents of articles of dissolution.

When the proceedings described in this Chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

(1) The name of the institution;

(2) The place where its main office was located;

(3) The names and addresses of the directors and officers of the institution at the time the liquidation proceedings were begun;

(4) A brief summary of the aggregate amount of general claims finally allowed against the institution, the order in which the claims were paid, and the aggregate amount of all other claims against the institution. A statement of the aggregate payments made on each of the groups of claims must be provided, referencing the orders of the receiver or the chancery court authorizing those payments and the current reports documenting such payments;

(5) A brief summary of the aggregate amount of payments made to the shareholders of the institution, whether of money or other property, and a reference to the orders of the receiver or the chancery court authorizing the payments and to the current reports wherein documentation of the payments is made.

23-49-118. Execution and filing of articles with Department - Certificate of dissolution.

(a) The articles of dissolution shall be executed in duplicate and presented in duplicate to the Department accompanied by fees prescribed by Department regulations.

(b)(1) Upon presentation of the articles of dissolution, the Commissioner shall endorse his approval upon each of the duplicate copies of the articles if he finds that they conform to law.

(2) When all fees have been paid as required by law, the Commissioner shall file one (1) copy of the articles in the Department and issue two (2) certificates of dissolution. One (1) certificate of dissolution shall be filed with the Department and the second shall be delivered to the receiver.

(c) Upon the issuance of the certificate of dissolution, the institution shall be dissolved and its existence shall cease.

(d) Upon the issuance of the certificate of dissolution, the receiver shall be authorized, as agent for the directors and shareholders of any subsidiary trust company, to file any and all documents with the Secretary of State necessary to terminate its corporate existence under applicable corporate law.

23-49-119. Voluntary liquidation.

(a) An application for approval to voluntarily liquidate the affairs of an institution shall be submitted to the Commissioner in such manner and form as the Commissioner may prescribe and shall include the information set forth in subsection (b) hereof, and contain such additional information which the Commissioner may require. The application shall include duplicate copies of a resolution authorizing the dissolution, and duplicate copies of a certificate, verified by the

applicant's president, or a vice president, setting forth the facts pertaining to the resolution and also that all of the applicant's liabilities have been paid in full.

(b) Each duplicate certificate shall have annexed thereto, over the official signatures, evidence showing:

(1) The date on which the resolution was authorized by the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon;

(2) The number of shares of each class entitled to vote on the resolution which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the resolution whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the resolution;

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c) Upon receipt of the application, the Commissioner shall investigate its merits. If the Commissioner is satisfied that the application is complete and that all applicable provisions of law have been complied with, he shall cause an examination to be made of the applicant institution for the purpose of verifying the payment of all of its liabilities. If the examination satisfies the Commissioner that all of the applicant's liabilities have been paid, he shall endorse one (1) copy of the certificate with his statement that the institution is voluntarily liquidating.

(d) The return of the endorsed copy of the certificate shall operate to free the institution from further examination and to authorize it, under its original corporate name, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all such other things as may be necessary to realize upon its remaining assets for the pro rata benefit of its stockholders, but not to engage or continue in any new or other business under its charter or otherwise.

(e) The liquidation shall proceed as expeditiously as possible, and at the conclusion thereof, the institution shall surrender its charter.

(f) In lieu of continuing the liquidation under the original corporate name, the institution may transfer the remaining assets to a trustee agreed upon by the stockholders by a majority vote and shall thereupon surrender its charter.

(g) Each application for approval of a voluntary dissolution shall be accompanied by a fee as shall be set by Department regulations and shall be paid to the Department.

23-49-120. Voluntarily placing an institution in possession of Commissioner.

(a) Any institution may place its affairs and assets under the control of the Commissioner by posting a notice on its front door as follows: "This financial institution is in the possession of the Arkansas State Bank Commissioner."

(b) The posting of the notice or the taking possession of any institution by the Commissioner shall be sufficient to place all of the assets and property of whatever nature in the possession of the Commissioner and shall operate as a bar to and dissolution of any attachment proceedings.

CHAPTER 50

MISCELLANEOUS VIOLATIONS OF BANKING LAWS

23-50-101. Prosecution of violations -- Nonliability of Commissioner.

(a) The Commissioner may initiate any appropriate civil or administrative action or remedy upon discovering a violation of this act or any other statute or regulation the enforcement of which is within the scope of his duty.

(b) Civil, administrative or criminal actions initiated by the Commissioner under this section which expose him or his estate to personal liability for damages, or otherwise, shall be defended by the State of Arkansas, and judgments, if any shall be obtained against him or his estate, shall be borne by the State of Arkansas.

(c) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith reliance upon an order or regulation of the Department notwithstanding a subsequent decision by a court invalidating the order or regulation.

23-50-102. Forfeiture of charter.

(a)(1) If the directors of any institution under the supervision of the Department shall knowingly violate or knowingly permit any of its officers, agents, or servants to violate any of the laws enacted for the regulation of any such institutions or any Department regulations, all rights, privileges, and franchises of the institution shall be subject to forfeiture.

(2) Any violation shall, however, be determined in the first instance by the Commissioner, after notice to the institution of not less than five (5) days, and after hearing thereon, and subject to appeal by the institution to the chancery court of the county wherein the institution has its main office. Any appeal shall be cognizable and subject to hearing by the chancery court, either in term time or in vacation, at chambers, upon five (5) days' notice of the taking of the appeal and of the time and place for the hearing.

(b)(1) Upon rendition of any decision adverse to any institution, the Commissioner shall be authorized, in his discretion, to take charge of the institution and manage and supervise the business thereof, pending any appeal that may be taken from the decision or orders.

(2) Upon affirmance by the chancery court of the decision or orders appealed from, the Commissioner shall be authorized to continue supervision, or to suspend the charter, of the institution, pending compliance with the decision or orders.

(3) If the decision or orders are not complied with (in the case of a state bank or subsidiary trust company) within a reasonable time to be fixed by the Commissioner, the Department shall proceed to liquidate the business and assets of the state bank or subsidiary trust company in the same manner as is provided in the case of insolvent state banks.

23-50-103. Misleading actions or use of words by unauthorized persons.

(a)(1) All persons, except those described in subdivision (a)(2) of this section are prohibited from using in this state, as a portion of or in connection with their place of business, their name or title, or in reference to themselves in their stationery or advertising, the following words or phrases, alone or in combination with any other word or phrase: "bank," "banker," "bankers," "banking," "federal reserve," "trust company," "trust," "savings and loan," "credit union," or "building and loan," or any other word or phrase which tends to induce the belief that the party using it is authorized to engage in the business of a bank, trust company, savings and loan association, or credit union.

(2) The prohibitions contained in subsection (a)(1) hereof shall not apply to those persons which discharge the burden of proving their authority to use the words or phrases described in subsection (a)(1) hereof under the laws of this or another state or of the United States

(b) All persons, except those described in subdivision (a)(2) of this section, are prohibited from doing or soliciting business in this state substantially in the manner, or so as to induce the belief, that the business, in whole or in part, is that of a bank, savings bank, trust company, credit union, or savings and loan association, either by the sale of contract, or of shares of its capital stock upon partial or installment payments thereof, or by the receipt of money, savings, dues, or other deposits, or by the issuance of certificates of deposit or certificates of investment of money, savings or dues.

(c) Nothing in this section shall be construed as preventing the use of the word "bankers" in combination with other words in connection with the place of business, name, and title of any finance or investment company operated in connection with, as a subsidiary to, or having joint offices with, a bank or trust company in this state, if the bank or trust company is subject to the supervision of the Commissioner and if the bank or trust company has the word "bankers" alone or in combination with other words in its name or title.

(d) Each violation of subsection (a) of this section shall constitute a felony which shall be punished by a fine of five hundred dollars ($500) per violation or by imprisonment not exceeding one (1) year, or by both fine and imprisonment.

(e) It is declared to be public policy that this law be liberally construed in favor of its enforcement.

(f) Nothing in this section shall be construed to authorize any person to engage in any activity not otherwise authorized under Arkansas law.

23-50-104. Circulation of false rumor injurious to bank.

A person is guilty of a class A misdemeanor whenever he:

(1) Maliciously, and without cause, circulates or causes to be circulated, either verbally or in writing, any rumor with the intent to injuriously affect the financial standing or reputation of any bank doing business in this state; or

(2) Makes any statement or circulates or assists in circulating any false rumor for the purpose of injuring the financial standing of any bank; or

(3) Seeks either by word or action to start a run upon a bank or connives or conspires with any parties for the purpose of injuring the standing or reputation or starting a run on the bank.

23-50-105. Embezzlement, misuse of funds, etc., by officer, director, etc.

(a) The following persons shall be guilty of a felony:

(1) Any officer, director, agent, or employee of any bank or subsidiary trust company who:

(A) Embezzles or willfully misapplies any of the moneys, funds, or credits of the bank or subsidiary trust company; or

(B) Without authority from the directors of the bank or subsidiary trust company issues or puts forth any certificate of deposit; draws any order or bill of exchange; makes any acceptance, or assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or

(C) Makes any false entry in any book, report, or statement of the bank or trust company with the intent in any case to injure or defraud the bank or subsidiary trust company, or the Commissioner, or any agent or examiner appointed to examine the affairs of the bank or subsidiary trust company, or the Banking Board;

(2) Every receiver or liquidating agent of a bank or subsidiary trust company who, with like intent to defraud or injure, shall embezzle or willfully misapply any of the moneys, funds, or assets of his trust;

(3) Every agent, attorney, employee, or assistant of any receiver or liquidating agent of any bank or subsidiary trust company who, with like intent to defraud or injure, shall embezzle or willfully misapply any of the moneys, funds, or assets of the trust of the receiver or liquidating agent; and

(4) Every person who, with like intent, shall aid or abet any officer, director, receiver, liquidating agent, employee, agent, attorney, or receiver in any violation of this section.

(b) Upon conviction, the person shall be fined in any sum not more than one million dollars ($1,000,000) or shall be imprisoned in the Arkansas penitentiary for not more than thirty (30) years, or both.

23-50-106. False statements or records -- Bribery of Commissioner, examiner, or Department employee.

The following persons shall be guilty of a class D felony:

(1) Any person or persons who shall knowingly and willfully subscribe to or make or cause to be made any false statement or false entry in the books of any financial institution with the intent to deceive the Commissioner or examiner; or

(2) Any person or persons who shall knowingly subscribe to or exhibit false papers with the intent to deceive the Commissioner or the examiner; or

(3) Any person or persons who shall make or publish any false statement concerning the assets, liabilities, or affairs of any financial institution; or

(4) Any person or persons who shall bribe or attempt to bribe or offer any gratuity to the Commissioner or any examiner.

23-50-107. False statements or records by officer, agent, or employee.

Every officer, agent, or employee of any financial institution organized or doing business under the laws of the state who willfully and knowingly subscribes to or makes any false reports or any false statements or entries in the books of the financial institution or knowingly subscribes or exhibits any false writing or paper with the intent to deceive any person as to the condition of the financial institution is guilty of a class A misdemeanor.

23-50-108. False reports by Commissioner or examiner -- Acceptance of bribe.

Any Commissioner or examiner who shall knowingly and willfully make a false or fraudulent report of the condition of any financial institution with the intent to aid or abet its officers, owners, or agents in continuing to operate an insolvent institution or to injure the financial institution, or any examiner who shall receive or accept any bribe or gratuity given for the purpose of inducing him not to file a true and correct report of the condition thereof or who shall neglect to make an examination thereof because of having received a bribe or gratuity, is guilty of a class D felony.

23-50-109. Disclosure of information or false report by examiner.

Any examiner who shall disclose any information obtained by him in the course of his employment, except to the Commissioner or the directors of the financial institution, or when subpoenaed as a witness in a legal proceeding, or who shall knowingly and willfully make, state, or publish any false statement or report concerning the assets, liabilities, or affairs of the

financial institution, shall be immediately removed from office, shall be liable under his official bond to the institution injured, and is guilty of a class D felony.

23-50-110. Certification of check when funds insufficient.

(a) It shall be unlawful for any officer, director, agent, or employee of any bank to certify any check drawn upon the bank unless the person drawing the check has on deposit with the bank, at the time the check is certified, an amount of money not less than the amount specified in the check.

(b) Any check so certified by a duly authorized officer, director, agent, or employee shall be a good and valid obligation against the bank.

(c) However, any officer, director, agent, or employee of any bank who shall willfully violate any provision of this section, or who shall resort to any device or receive any fictitious obligation, directly or collaterally, in order to evade the provisions thereof, or who shall certify a check before the amount thereof shall have been regularly deposited in the bank to the credit of the drawer thereof is guilty of a class A misdemeanor."

Arkansas
State Bank Department

Rules and Regulations
Manual

SECTION R1

STATE BANK DEPARTMENT - GENERAL PROVISIONS

46-101.1 - REQUESTS FOR DOCUMENTS.

Requests for non-confidential documents may be made by filling out a request form provided by the department. Telephone requests may be accepted.

46-101.2 - FEES FOR COPIES PROVIDED PURSUANT TO REQUEST.

Copies of documents provided pursuant to request from the public or in the case of subpoena (if the copies are of confidential records) will be provided based upon the following fee schedule:

- regular copies - $ .50 per page;
- certified copies - $1.00 per page;
- microfilm copies - $1.00 per page;
- faxed copies - $ .50 per page extra.

46-101.3 - CONFIDENTIAL OR NON-CONFIDENTIAL STATUS OF BANK DEPARTMENT RECORDS.

A. The names of **stockholders of a bank or bank holding company** will not be regarded as confidential.

B. **Articles of Agreement and Incorporation** and all amendments are not confidential.

C. **Stock Transfers**. A one-page request form submitted to the Commissioner requesting a transfer of bank stock from one stockholder to another. **However, any information submitted to the** Commissioner, including any personal financial statements, along with the request will be regarded as confidential and is not subject to disclosure.

D. **Charter and branch applications**. Bank charter applications and branch bank applications may be disclosed to anyone with the exception that personal financial statements submitted in support of such applications shall be regarded as confidential and are not subject to disclosure.

E. **Reports of Condition and Income**. Reports of Condition and Income are submitted by the banks to the Department. The contents of such reports are available for public disclosure, with the exception of certain portions of the report considered as confidential by Federal Regulatory Agencies.

F. **Examination Reports**. Examination reports are highly confidential and are not subject to public disclosure. Such examination reports are regularly submitted to the federal regulatory authorities and/or other state financial institution regulatory authorities, as well as to the examined bank as a matter of regulatory process. However, the examination reports remain the property of the Department and, as such, the report, as well as all correspondence between regulatory authorities and the examined bank in respect to the examination report, is confidential, A.C.A. § 23-46-101.

G. **Investigation Reports**. An investigation made by a bank examiner assigned to investigate the merits of an application is generally considered as confidential. The exception being that the Commissioner, in his/her discretion, reserves the right to permit an investigation to be reviewed by the applicant and an official protestant to an application and permit introduction into evidence, by a party to the proceeding, those portions of the investigation which may be necessary and relevant to that proceeding.

H. **Corporate "File"**. A bank's corporate file contains the following: Articles of Incorporation, Amendments to Articles of Incorporation, Oaths of Directors, list of stockholders, and certificate of director's transfer of funds from undivided profits to the surplus account. The file is subject to disclosure with the exception of any information in support of a petition for a stock transfer since such supportive information is confidential.

I. **Financial Statements**. Personal financial statements shall not be exhibited to the public.

LEGAL HOLIDAY (BANK)

48-103.1. LEGAL HOLIDAY; APPLICABLE LAW.

The legal holidays applicable to state banks shall be those holidays set forth in A.C.A. § 1-5-101 and such other holidays as shall be established from time to time by the Board of Governors of the Federal Reserve System. A state bank is not required to close on any legal holiday. A bank may close one business day of each week in which event the day of such closing is deemed a legal holiday and not a business day. Business transacted on a holiday is binding and shall have the same effect as if transacted on the next succeeding business day. All items payable on a legal holiday shall be deemed to be payable on the day next succeeding the holiday.

46-203 - CERTIFIED COPIES AND CERTIFICATES OF GOOD STANDING FEES.

Certified copies of records and papers furnished to an individual by the State Bank Department will be charged at a rate of $1.00 per page.

Certificates of Good Standing provided by the State Bank Department will be charged at $50.00 per certificate.

46-207.1 - INTEREST IN STATE BANKS; PARTICIPATION IN.

State Bank Department employees, subject to A.C.A. § 23-46-207, may be a depositor in any financial institution the Department regulates and may participate in overdraft programs associated with such deposit relationships so long as participation in such programs are regularly offered as a customer service of the institution.

PROCEEDINGS BEFORE THE BOARD AND COMMISSIONER

46-304.1 - APPLICATIONS.

The Commissioner and the State Banking board rule that applications forms provided by the State Bank Department for various applications will request information required for submission of an application to the Board or the Commissioner. The Board and the Commissioner reserve the right to request additional information as necessary to consider an application.

46-305.1 - APPLICATIONS. FACSIMILE.

The Commissioner and the State Banking board will permit documents or applications which necessitate Commissioner approval or State Banking Board approval, or both, to be submitted by facsimile with the requirement that the original documentation must be provided within ten (10) days of the facsimile submission.

46-402.1 - MEETINGS OF THE BOARD; REGULAR MEETING DATES.

Meetings of the State Banking Board will be held in offices of the State Bank Department, except in the case of meetings at which a large attendance is anticipated. In such a situation, the Commissioner will arrange for a meeting in outside quarters where a larger space is available.

Regular meetings of the Board may be scheduled four (4) times a year. These meetings will be held at 10:00 a.m. on the third Thursday of January, April, July, and October, but if, in the opinion of either the Commissioner or chairman of the State Banking Board, any necessitous reason exists for changing the date of a regular meeting, either said Commissioner or chairman may reset the meeting for a different date after giving notice as required in these regulations for the call of a special meeting. All meetings are public except when the members meet in executive session as permitted under the Arkansas Freedom of Information Act.

46.403.1. PUBLICATION REQUIREMENTS. APPLICATIONS BEFORE THE STATE BANKING BOARD.

Sponsors of the following applications must publish notice of the proposed application three (3) times at equal intervals in a newspaper of statewide circulation. Publication shall be as close as practicable to the date the application is filed with the State Bank Department, but no more than ten (10) calendar days prior to or after the filing date. Publications must provide for a fifteen (15) day comment period beginning with the actual filing of the application. These applications are:

(1) New state bank charters;

(2) Merger or consolidation applications between one or more banks, or saving and loan associations into a state bank;

(3) Purchase or assumption application (over 50% of the assets or liabilities) of another depository institution; and

(4) Change of a state bank's main banking office from one municipality to another.

46-404.1 - APPLICATION FILING FEES. APPLICATIONS TO BE PRESENTED TO THE STATE BANKING BOARD.

Following is a list of application filing fees:

a) New bank charter	$8,000
b) Merger applications (per institution)	$5,000
c) Conversion (national bank to state bank)	$8,000
d) Conversion (stock savings and loan or federal savings bank to state bank)	$8,000
e) Charter amendments	$ 200
f) Charter amendments for trust powers	$ 500
g) Purchase or assumption (over fifty percent (50%) of assets or liabilities of another depository institution)	$5,000
h) Relocation of main office (from one municipality to another)	$2,500

46-404.2 - APPLICATION FILING FEES. APPLICATIONS WHICH ARE NOT FILED WITH THE STATE BANKING BOARD.

a) New branch banking office A.C.A. § 23-48-703	$3,000
b) Relocation of existing branch office (inside current municipality) A.C.A. § 23-48-702	$1,000
c) Relocation of existing branch office (outside of current municipality)A.C.A. § 23-48-702	$2,500
d) Plan of exchange (plus expenses of Commissioner; does not include costs associated with appraisals of bank stock)	$ 500
e) Filing of fictitious name	$ 25
f) Filing of out-of-state bank/bank holding company	$ 300
g) Change in Control	$1,500
h) Purchase or Assumption (less than fifty percent (50%) of assets or liabilities)	$3,000

46-406.1 - HEARINGS. FILING FEES FOR WRITTEN/OFFICIAL PROTESTS

a) A filing fee of $2,500 will be required to file an official protest for the following applications:

1) New bank charter
2) Merger application
3) Purchase or assumption (over fifty percent (50%) of assets or liabilities) or (less than fifty percent (50%) of assets or liabilities)
4) Conversion (national to state bank)
5) Conversion (stock savings and loan or federal savings bank to state bank)
6) Relocation of main office (from one municipality to another)

b) A filing fee of $1,000 will be required to file an official protest for a branch application (A.C.A. § 23-48-703).

46-407.1 - REHEARING MODIFICATIONS.

The State Banking Board and the Commissioner take the position that until the Findings of Fact, Conclusions of Law, and written decision have been served on the parties, the Board has the power to reverse, modify, or rehear a decision formerly reached.

46-509.1 – ASSESSMENT FEES

The State Banking Board and the Bank Commissioner require that assessment fees payable on a semi-annual basis to the State Bank Department be remitted by automated processing as established by the Bank Commissioner. Exceptions for payment of assessment fees by any other method than the automated method established by the Department must be upon prior request and approval by the Bank Commissioner. Exception requests will only be approved on an extraordinary basis.

46-511.1 - BANK RETENTION OF RECORDS. Arkansas state banks are required to maintain the following records permanently:

a) Minute books of meeting of stockholders and directors; and
b) Capital stock ledger and capital stock certificate ledger or stocks.

All records, other than those described in part a) and b) shall be retained as follows:

Examination reports..... permanent
Call reports..... permanent
General ledger..... permanent
Accounts payable..... 7 years

GENERAL

Customer relationship contract, after closing

Signature cards	10 years
Loan applications - Consumer	25 months
Loan applications – Business	12 months
Overdraft loan agreement	6 years
Safe deposit agreement	10 years
Night depository agreement	1 year

Financial activity records

Deposit tickets	10 years
Buy/sell orders for securities (after maturity)	3 years
Withdrawal receipts	10 years
Cash letters	1 year
Stop payment orders	6 years
Safekeeping receipts	7 years
Wire transfer receipts	6 years
Safe deposit access records	7 years

Accounting records of financial activity

Transaction journal	7 years
Note and discount register	10 years
Draft register	10 years
Dividend Checks	10 years

Reconciliation record of account activity

Customer statements	6 years
Checks paid	7 years

Supporting and specialized documentation

Collateral records or receipts	10 years
Amortization records	to maturity
Credit files	6 years
Account analysis records	3 years
Proof sheets	3 years
Overdrafts	4 years
Trial balance	4 years
Return or exception items	5 years
Transit letters	3 years
1099 forms	5 years

DEPOSITS

Evidence of compliance with Electronic Funds Transfer Act ..... 2 years

Currency transactions over $10,000 reports ..... 5 years

Exemption reports and written statements for currency
Transactions over $10,000, after removal from exemption list ..... 5 years

Taxpayer identification records for certificates of deposit,
After redemption ..... 6 years

Signature cards for deposit accounts verifying identity of signer ..... 10 years

Statements or ledger cards for deposit accounts ..... 6 years

Checks, drafts, and money orders over $100 except for accounts
Which average 100 checks per month and fall into one of these
Categories; payroll, dividend, employee benefit, insurance claims,
Medical benefits, government agency, brokers or dealers in
Securities, fiduciary accounts, pension or annuity checks, and
Checks drawn on other financial institutions ..... 6 years

Certificates of deposit records, purchased ..... 5 years

Certificates of deposit records, redeemed ..... 10 years

Deposit slips or credit tickets for transactions over $100
that identify amount of currency transacted ..... 10 years

LOANS

GENERAL

Credit extension records for transactions over $10,000,
excluding real estate required by the Bank Secrecy Act
(formerly $5,000) ..... 5 years

COMMERCIAL

Standby letters of credit records (Regulation H) ..... Not specified

INSTALLMENT/CONSUMER

Credit evaluations required by Equal Credit Opportunity Act and Regulation B, after notification or final disposition

- Consumer ..... 25 months
- Business ..... 12 months

Evidence of Compliance with Consumer Credit Protection Act Title IX for EFTS services ..... Until final disposition

Evidence of compliance with Truth in Lending requirements (Regulation Z), after disclosure ..... 3 years

INVESTMENTS

Municipal securities deal transactions records. Forms MSD4 and Forms MSD5 (Regulation H), after disclosure ..... 3 years

Broker/deal transactions and commission records, customer account records and related correspondence ..... 3 years

Credit information relating to public and investment securities ..... 3 years

Records of lost or stolen securities ..... 3 years

Transaction records for brokers and dealers extending credit (Regulation T) ..... 3 years

TRUST

Fiduciary records, after termination of account or settlement of litigation ..... permanent

Investments of each trust account shall be kept separate from the assets of the bank ..... 10 years

OTHER RECORDS NOT SPECIFIED ..... 6 years

All records as noted in Act 89 of 1997 may be retained by photographic or other reproduction methods in lieu of retention of original records.

48-310.1 - APPEAL OF COMMISSIONER DECISION ON MINIMUM CAPITAL REQUIREMENTS TO STATE BANKING BOARD.

A state bank may appeal an order of the Commissioner to increase its capital stock to the Arkansas State Banking Board. Notice of the bank's request for appeal must be served upon the Commissioner and the members of the State Banking Board by personal service or certified mail within ten (10) days of the date the Commissioner's order was issued. A public hearing on the appeal will be held as soon as practicable by the State Banking Board. Notice of the hearing will be given twenty (20) days prior to the date of the hearing stating the time, date, and location of the hearing. Notice will be provided by United States mail to the parties to the appeal and published one time in a newspaper of statewide circulation. The bank requesting such an appeal will be required to provide a court reporter and transcript of the hearing to the Arkansas State Banking Board free of charge.

SECTION R2

GENERAL POWERS OF BANKS

47-101.1. WAREHOUSING MORTGAGES AND OTHER LOANS.

A.C.A. § 23-47-101(a)(14)permits state banks "to warehouse or act as agent in warehousing mortgages and other loans;". The aggregate of mortgages or other loans shall not be applied against the legal lending limit if the state bank is acting as agent in warehousing mortgages or other loans for a subsidiary.

47-101.2 INCIDENTAL POWERS.

A.C.A. §23-47-101(b) reads: "In addition to the foregoing, a bank may exercise any other powers which are incidental to the business of banking." This statutory reference to incidental powers is very similar to the National Banking Act. The Commissioner and the Banking Board may give consideration to the interpretations of similar words in the National Bank Act by the Comptroller of the Currency, but shall not utilize this section to permit the exercise of any power or performance of any activity which is beyond the reasonable progression of the business of banking as authorized in the Arkansas Code.

47-101.3. WILD CARD STATUTE.

Pursuant to the power granted to the Commissioner by A.C.A. §23-47-101(c), the Commissioner, by written order, may authorize state banks to engage in any banking activity then permitted to national banks. Such authority may be subject to such conditions and restrictions as the Commissioner may determine to be appropriate, whether or not any such conditions or restrictions are applicable to national banks.

47-101.5. DISPOSITION OF INCOME FROM THE SALE OF CREDIT LIFE INSURANCE OR DEBT CANCELLATION CONTRACTS.

(a) Individual employees, officers, directors, and principal shareholders of a state bank shall not personally profit by retaining commissions or other income (including experience rating credits and other rebates, but not including any portion of a premium required to cover the underwriting risk) from the sale of credit life, health and accident, and mortgage life insurance ("credit life insurance") or debt cancellation contracts to the institution's loan customers. However, employees and officers may participate in a bonus or incentive plan based in whole or in part on sales of credit life insurance or debt cancellation contracts under which payments by

the state bank in any year may not exceed 5% of the recipient's annual salary. Alternatively, bonuses paid to any individual during the year for sales of credit life insurance or debt cancellation contract may not exceed 5% of the average salary of all loan officers participating in the plan. Payments may not be made to employees and officers more frequently than quarterly.

(b) Income derived from the sales of credit life insurance or debt cancellation contracts to loan customers shall be credited to the income accounts of the state bank and not to the individual employees, officers, directors, or principal shareholders, their interests, or other affiliates. However, such income may be credited to an affiliate operating under the Bank Holding Company Act or to a trust for the benefit of all shareholders, provided that the state bank receives reasonable compensation in recognition of the role played by its personnel, premises and goodwill in credit life insurance and debt cancellation sales. As a general rule, "reasonable compensation" means an amount equivalent to at least 20% of the affiliate's net income attributable to the state bank's credit life insurance or debt cancellation sales.

(c) Where other legal considerations preclude a bank from using a particular procedure for selling credit life insurance or debt cancellation contracts or from disposing of the income in a particular manner, a state bank that wishes to provide this service to its loan customers shall seek and utilize an alternative method that complies with (a) and (b) above.

(d) The distribution to shareholders of income derived from the sale of credit life insurance and debt cancellation contracts shall be accomplished through a declaration of dividends in conformity with law, rule, regulation and prudent financial practices.

(e) Nothing in this section shall be construed to prohibit a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, and goodwill; provided, that all income directly received by such employee, officer, director, or principal shareholder from this activity is remitted to the bank as compensation.

RIGHT OF BANK TO EXECUTE GUARANTY

47-101.6. GUARANTIES.

A state bank is not authorized to be an accommodation guarantor. An accommodation guaranty by a state bank is void and ultra vires. A state bank can execute a valid guaranty agreement if such action is necessary or advisable to protect an economic interest of the bank. In Bank of Morrilton v. Skipper, Tucker & Co., 165 Ark. 49, the bank executed an agreement guaranteeing the payment of certain liabilities by one of its customers. The purpose of the guaranty was to enable the customer (who was indebted to the bank) to collect funds under an improvement district contract that would enable the customer to pay the debt to the bank. The case was remanded for a new trial; but the Supreme Court recognized that a guaranty executed for the

purpose stated would be binding on the bank. In Wasson v. American Can Co., 189 Ark. 354, the bank guaranteed the payment of certain drafts by one of its customers that owed it about $3,000. The guaranty by the bank was intended to enable the customer to purchase cans for tomato canning purposes and the intention of the bank was that this guaranty would enable the customer to continue business operations and pay part or all of the indebtedness to the bank, held that this guaranty was to protect an economic interest of the bank and was binding on the bank. The same principle of law was recognized in Citizens Bank of Booneville v. Clements, 172 Ark. 1023. See also Merchants & Planters Bank & Trust Company v. Deaton, 200 Ark. 828; also Nakdimen v. First National Bank, 177 Ark. 303.

47-101.7 COMPUTER SERVICES BY BANK OR OPERATING SUBSIDIARY.

Any state bank, with the approval of the Commissioner, and so long as national banks are so authorized, may furnish computer, data processing, item processing, billing and posting services through its own organization or an operating subsidiary pursuant to A.C.A.§ 23-47-601 (and without the necessity of becoming a stockholder of a Bank Service Company) to other banks, and to non-banking customers who are its depositors.

MESSENGER SERVICE

47-101.8 MESSENGER SERVICE.

(a) To meet the requirements of its customers, a state bank may provide messenger services within the geographic limits of its operations by means of an armored car or otherwise, under which messenger service:

(1) funds may be picked up by the messenger and transmitted to the bank for deposit; and

(2) funds may be transmitted by the bank to its customer by messenger.

(b) The messenger service shall be pursuant to a written contract between the bank and the customer wherein it is agreed that in performing the functions under both (a)(1) and (a)(2) above, the messenger is the agent of the customer; that where funds (including currency, coin, checks or similar items) are transmitted to the bank by messenger for deposit, title to the funds shall remain with the customer until they are accepted by a teller of the bank at its banking house or any branch, and the depositor relationship shall not commence until such acceptance; that funds delivered by the bank to the messenger for transmission to a customer shall become the property of the customer when they are delivered to and accepted by the messenger, the customer's withdrawal to be deemed to have been affected as of that moment.

(c) Hazard insurance covering holdup, robbery, theft, messenger fidelity or misappropriation shall be carried for the protection of the customer for all funds transmitted by messenger to or from the bank. The premiums on such insurance may be paid by the bank.

47-101.9. POWER TO BORROW.

The Arkansas Banking Code impose no restriction upon a bank's borrowing power except the issuance of capital notes. Excessive borrowing by a bank can affect its capital adequacy and may subject the bank to administrative action by the Commissioner. Except in the case of capital notes, borrowing by a bank does not require prior approval by the Commissioner.

48-307.1. CHARTER AMENDMENT APPLICATION FOR CHANGE OF BANK CORPORATE NAME.

Prior to filing an application with the State Bank Department for a charter amendment to change the corporate name of a state bank, the bank must complete the following procedures:

A) Publish legal notice of intention to change the corporate name of the bank one (1) time in a newspaper of statewide circulation. Such notice shall include both the current corporate name of the bank and the proposed new name. A copy of the legal notice must accompany the application; and

B) Request a current check of both state and federal trademark or servicemark filings on the proposed new name. This request may be implemented through the Arkansas State Library, Reference Department, One Capitol Mall, Little Rock, Arkansas 72201. The fax number for the Library is 501-682-1529. Requests must be submitted in writing and the check will be performed in the exact or almost exact name as requested. Evidence must accompany the application for charter amendment verifying the applicant has made a trademark or servicemark search and no trademark or servicemark exists for the proposed name.

Once the charter amendment is received by the State Bank Department, notice of the filing of the application will be sent to all state-chartered banks by electronic transmission. Any protestants will have seven (7) days from the date the Department notice was sent to file an official protest to the application. An official protest must be provided to the Department in written form delineating the reasons for the protest and must be accompanied by a filing fee of two hundred dollars ($200).

48-309.1. RESERVATION OF BANK CORPORATE NAME.

The State Bank Department will accept a reservation for a bank corporate name only prior to and for the purpose of formation of a new state bank or prior to the consummation of an interstate merger transaction. The reservation will be for a nonrenewable two hundred seventy day period. A name not used permanently prior to the expiration of this period will be cancelled.
Prior to filing a reservation of corporate name an applicant must:

Request a current check of both state and federal trademark or servicemark filings on the proposed name. This request may be implemented through the Arkansas State Library, Reference Department, One Capitol Mall, Little Rock, Arkansas 72201. The fax number for the Library is 501-682-1529. Requests must be submitted in writing and the check

will be performed in the exact or almost exact name as requested. Evidence must accompany the application for reservation of corporate name verifying the applicant has made a trademark or servicemark search and no trademark or servicemark exists for the proposed name.

48-315.1. CAPITAL NOTES.

(a) A state bank, with the prior approval of the Commissioner, may issue subordinated capital notes. These notes may be authorized by the bank's directors; no stockholder's action being required. The notes must be sold at not less than par. The aggregate par value of the outstanding capital notes of a bank shall not exceed one-half (½) of the capital base of the issuing bank. Such notes shall be retired at such time and in such manner as may be fixed by the Board of Directors of the issuing bank, but not later than twenty (20) years after the date of issuance, subject to extension of the term as set forth in A.C.A. §23-48-315.
(b) It is strongly suggested that the terms of the capital notes clearly state that the subordination to deposit liabilities shall be effective only while the bank is in a state of impaired capital, insolvency, liquidation, etc. Otherwise, the bank, though entirely solvent, might find it impossible (without violating the provisions of the notes) to pay the capital notes until it had retired all of the senior indebtedness.
(c) A bank issuing capital notes must procure from the State Securities Commissioner an exemption certificate under A.C.A. § 23-42-503 (Supp. 1987).

48-315.2. FEDERAL REGULATIONS.

Pursuant to both the Federal Reserve and FDIC Regulations, the capital notes must have an original average weighted maturity of five (5) years or more. The five (5) year term begins, not from the date written on the note, but from the date the note is actually issued and placed in circulation.

SECTION R3

DEPOSITS

(RESERVED)

SECTION R4

INVESTMENTS

47-401.1 - INVESTMENT, CORPORATE DEBT OBLIGATIONS.

A bank may invest in debt securities, not in the purchase of stock, with certain exceptions. As to convertible debentures:

a) If the securities are convertible into common stock at the option of the issuer, the bank may not purchase them.

b) If convertible at the option of the holder, the bank may purchase them but must write down the cost to an amount which equals the investment value of the security determined without assigning any value to the conversion feature.

PERMISSIBLE EXCEPTIONS. COMMON STOCK. TRUST PREFERRED SECURITIES.

Common stock is not generally determined to be an investment security. The State Banking Board and Commissioner rule that in some instances the purchase by a bank of common stock may facilitate the exercise of a true banking function and be "incidental to the business of banking." A bank could not purchase and hold common stock solely for the purpose of collecting dividends thereon; but if the acquisition of the common stock is merely incidental to the exercise of some valid banking power, it is permitted. Banks that are active in student loan operations may purchase and hold common stock of the Student Loan Marketing Association ("Sallie Mae"). Banks that participate in the secondary market for agricultural and rural housing real estate mortgages under the direction of the Federal Agricultural Mortgage Corporation ("Farmer Mac") may purchase and hold stock in the Corporation (adopted by the State Banking Board April 19, 1988).

Trust preferred securities are investments also called "trust preferred stock" which possess characteristics similar to debt obligations. Trust preferred securities are authorized investments for a state bank provided the preferred stock meets the investment quality and marketability requirements applicable to investment securities in accordance with the Federal Deposit Insurance Corporation, Financial Institution Letter, FIL-16-99, February 9, 1999, and any amendments thereof. Investments in trust preferred securities will be subject to the bank's legal loan limitation.

47-401.2 - INVESTMENT - CONSUMER PAPER.

A bank may purchase consumer paper provided it purchases the paper without recourse, warranty, or repurchase agreement of any kind. If, however, the bank purchases a dealer paper under an arrangement whereby the dealer endorsed the paper or guaranteed its payment or repurchase, then under A.C.A. § 23-47-501, the loan limit (so far as the dealer in concerned), would be exceeded if the dealer's liability as endorser plus his/her primary liability, if any, to the bank exceeds twenty percent (20%) of the capital base. But in this situation the bank could escape a violation of the loan limit if it took adequate Certificates of Reliance (See Certificates of Reliance under Legal Lending Limits).

1. **EFFECT OF RESERVE.** When consumer paper is purchased by the bank under guaranty or repurchase agreement, if the contract provides for the creation of a reserve by withholding from disbursements or otherwise out of which the bank is entitled to remedy defaults, for loan limit purposes the amount of this reserve may be deducted from the total advances to the dealer.

2. **EFFECT OF DEFAULT.** If two consecutive installments under an item of pledged consumer paper which the dealer has transferred with recourse or under a guaranty should at any time be in default, the entire amount owning under the defaulted item will be charged against the dealer's loan limit notwithstanding the fact that the defaulted item may be covered by a Certificate of Reliance.

47-401.3 - REVENUE OBLIGATIONS.

Any single revenue bond issue of a governmental unit or political subdivision shall be subject to the twenty percent (20%) limitation of the capital base of the bank. A political subdivision will be defined to include an improvement district.

> **NOTE: REVENUE OBLIGATIONS; NOT TO BE COMBINED. For municipal bond obligations payable solely from pledged revenues, the twenty percent (20%) limitation should be applied to each business corporation whose obligation (for rent or otherwise) if being assigned to secure the bonds, and to each bond or note issue payable solely out of revenues; but these revenue bonds should not be combined in determining whether the loan limit of the municipality has been exceeded.**

47-401.4 - TRADING ACCOUNT.

Any state chartered bank, or bank holding company owning a state chartered bank, which establishes a "Trading Account" (a "Trading Account" is a segregated account in which assets are held for resale by a bank that regularly engages in trading activities), should be aware that such trading account activity is a high risk activity. Due to the inherent risk, any state chartered bank establishing such an account is required to maintain a written policy setting forth guidelines by which the purchase and sales may be conducted. Such policy must receive the approval of the bank's board of directors and notices of such approval, with a copy of the policy, forwarded to the Commissioner.

> **NOTICE: ENGAGING IN TRADING ACCOUNT ACTIVITY IS A HIGH RISK ACTIVITY!** Banks that engage in the purchase and sale of investments in anticipation of interest rate changes, price changes, and changes in the market or economic condition or for other speculative purposes are engaging in "Trading Account" type activities. Such transactions must be conducted through the appropriate establishment of a "Trading Account." Failure to conduct such "Trading Account" type activities in a duly authorized "Trading Account" will result in the state or federal bank examiners declaring a bank's entire investment account a "Trading Account" and will require all investments to be marked to the lower of market value or acquisition cost. In establishing a "Trading Account" bank directors are reminded of the high risk and speculative nature of this type of banking activity.

STATE BANKING BOARD REQUIREMENTS.

If, after considering the risk of loss, and the possibility of gain, a bank wishes to establish a "Trading Account," it must consider and adopt a policy addressing the following:

A. The bank's board of directors shall adopt written objectives of the "Trading Account."

B. The bank's board of directors shall designate the officer(s) authorized to negotiate such trading transactions.

C. The bank's board of directors shall establish the maximum dollar amount of exposure acceptable to its bank.

D. The bank's board of directors shall identify the type of trading instruments to be traded (treasury bills, government bonds, government agencies securities, tax exempt securities, commercial paper, certificates of deposit, banker's acceptances, put options, call options, other bonds, notes and debentures, gold and silver bullion).

E. The bank's board of directors shall require all transactions to be recorded at the time a contractual obligation to purchase or to sell in an appropriate record at the bank reflecting the bank's "obligation to purchase" or the bank's "obligation to sell". At the time a transaction is consummated, the transaction shall be fully documented requiring invoicing, settlement sheets, etc.

F. The bank's board of directors shall establish, prior to trading activities, the dollar amount of profit or loss it is willing for the bank to incur.

G. The bank's board of directors shall approve a list of security dealers who are eligible for the designated officer(s) of the bank to enter into trade transactions. In approving the list of the dealers, the bank's board of directors must obtain reasonable background information, current financial data, and such other information necessary to establish the character, integrity and financial stability of the dealers which the bank's board of directors proposed to transact business.

H. The bank's board of directors shall require monthly written reports to be submitted by the officer(s) responsible for "Trading Account" activities for review by individual directors.

I. The bank's board of directors shall review the activities in the "Trading Account", including the number of transactions, the bank's exposure, the profit or loss, and the "Trading Account" policy, regarding the adequacy of the policy and the bank's strict adherence to the policy, no less frequently than quarterly with such review being noted in the minutes of the board of directors' meetings.

J. All transactions shall comply with, and meet all requirements of Arkansas' banking laws, rules and regulations, and applicable federal banking laws.

All assets held in "Trading Accounts" are to be reported consistently at lower of the market value or acquisition cost. It is recommended this reporting be made to the bank's board of directors no less frequently than monthly. It is required that this reporting at the lower of market or acquisition cost be done no less frequently than quarterly and reported in accordance with the instructions for the preparation of the Reports of Condition and Income.

Transfers to and from a "Trading Account", or any other account of the bank shall be recorded at market value at the time of the transfer and gains and losses recognized accordingly.

All accounting of gains or losses resulting from "Trading Account" activities shall be consistent with reporting guidelines contained in the instructions for the Report of Condition and Income.

The bank's board of directors shall require written reports to the board which shall include, at a minimum, the following:

1. Total dollar amount held in the "Trading Account."

2. Inventory list by issue with purchase price and current market value.

3. The number of trades which were engaged in during the previous month and the total dollar volume traded.

4. The dollar amount and the number of trades engaged in with each securities dealer.

5. The monthly profit or loss and the year-to-date profit or loss from the "Trading Account" activities, including unrealized losses.

6. Any pending transaction(s) (purchase and/or sale).

BANK SERVICE COMPANIES

47-603.1. BANK SERVICE COMPANIES.

State banks may establish, create or invest in bank service companies which may be corporations or limited liability companies to perform the bank services defined in the statute, including computer and data processing services and such other services as the Commissioner may from time to time by order permit. The stock, in the case of a corporation, or the membership interest, in the case of a limited liability company, of a bank service company may also be owned by persons other than state banks. The operation of bank service companies shall be subject to regulation and examination by the Commissioner so long as any state bank utilizes the services thereof and owns any equity interest in such organization or has any loans outstanding to such organization.

47-603.2. LIMITATION ON INVESTMENT.

The aggregate of the loans to and investment in a bank service company cannot exceed twenty percent (20%) of the capital base of a state bank.

SECTION R5

LOAN LIMITS

47-501.1 - CERTIFICATES OF RELIANCE. ENDORSED OR GUARANTEED OBLIGATIONS.

The board of directors must by resolution designate the officer(s) authorized to make the certification aforesaid. Each such certification must be supported by adequate data in the bank's credit files. However, it does not seem reasonable to require that in each instance the certification should be made before the credit is extended; therefore, the Commissioner and the State Banking Board will require that the certification be made within twenty (20) days after the completion of the credit transaction. A separate certificate must accompany each obligation for compliance purposes. It is recommended that this not be stamped on the instrument so that compliance with this section will not have an impact on any legal liability or claim.

47-501.2 - COMBINING LOANS TO PARENT CORPORATION AND SUBSIDIARY, AND LOANS TO SEPARATE SUBSIDIARIES.

The Commissioner and State Banking Board rule that separate loans to a parent corporation and its subsidiary must be combined, for the assets of the parent may be represented wholly or in part by the stock of the subsidiary. If separate loans are made to two or more subsidiaries which operate separately and entirely independent of each other, then so far as the loan limit law is concerned, each could borrow up to the full loan limit; but if a subsidiary is dependent is its operations upon another subsidiary of the same parent for some vital service or commodity, the loans should be combined. If the parent corporation is not borrowing, obligations of subsidiary corporations are generally not combined except in the following situations:

A. the bank is looking to a single source for repayment of the loan;

B. one or more loans are for the accommodation of the parent corporation or other subsidiary; or

C. the borrowing corporations are not separate concerns in reality but merely departments or divisions of a single enterprise.

Obligations of a corporations must be combined with any other extension of credit the proceeds of which are used for the benefit of the corporation.

47-502.1 - DRAFTS OR BILLS OF EXCHANGE.

The Commissioner and the State Banking Board rule that this exception applies to negotiable drafts and to bills of exchange drawn by the seller of commodities upon the purchaser and bearing the acceptance of the latter, or drawn by the purchaser of commodities upon his bank and endorsed by the seller. In order to qualify under this exception, drafts or bills of exchange must be two name paper. Thus, unaccepted drafts are not eligible, nor are bills of exchange endorsed without recourse or not endorsed.

47-502.2 - OBLIGATIONS DRAWN AGAINST EXISTING VALUES.

The Commissioner and the State Banking Board rule that this exception applies to obligations secured by pledge of bill of lading covering goods or commodities in process of shipment. It is immaterial whether the obligation is negotiable and whether it is one-name or two-name paper; but the exception applies only to paper in connection with a sale transaction.

47-502.3 - OBLIGATIONS SECURED BY CERTAIN TRANSFERABLE DOCUMENTS OF TITLE.

The Commissioner and the State Banking Board rule that one hundred fifteen percent (115%) collateral margin applies both to livestock and readily marketable and nonperishable commodities, etc., covered by transferable documents. "Transferable documents" will be construed to include merely title documents, such as bills of lading or warehouse receipts, and not to include a lien instrument such as a chattel mortgage.

If one hundred fifteen percent (115%) collateral margin should be impaired by depreciation, the failure to restore the margin may result in a loan limit violation.

Even though the bank has previously loaned a borrower up to the statutory loan limit of twenty percent (20%), it may, without committing a loan limit violation, lend the same borrower additional funds against collateral properly margined as provided in the last preceding paragraph.

47-502.4 - OBLIGATIONS GUARANTEED BY FARM SERVICE AGENCY.

Obligations, which the Farm Service Agency or United States Department of Agriculture (formerly Farmers Home Administration), guarantees against any loss sustained by the bank are, to the extent of such guarantee, free from loan limitations.

47-502.5 - LOANS SECURED BY CERTIFICATE OF DEPOSIT.

The portion of a loan properly secured by a commercial bank certificate of deposit, whether it is an “own” bank certificate of deposit or a certificate of deposit issued by another commercial bank will not be subject to that bank’s legal loan limit.

47-502.6 - LOAN COMMITMENTS AND STANDBY LETTERS OF CREDIT.

Loan commitments and standby letters of credit will be subject to a banks legal loan limit in the entire amount on the date the loan commitment or letter of credit is issued in written form whether or not any, a portion of, or all of the loan has been funded.

SECTION R6

SUBSIDIARIES

(RESERVED)

SECTION R7

TRUST POWERS

47-701.1. ACTIVITIES NOT REQUIRING TRUST POWERS.

A bank acting as escrow holder under an ordinary escrow contract, where the bank has no power to invest the escrowed funds, does not require trust powers. A state bank without trust powers may act as paying agent under a bond or note issue but it may not act as trustee thereunder.

47-701.2. FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL RESERVE APPROVAL.

A non-member insured bank may not adopt trust powers without Federal Deposit Insurance Corporation approval. A state member bank must obtain Federal Reserve approval.

47-701.3. TITLE TO TRUST SECURITIES IN NAME OF A NOMINEE.

A bank or trust company in the administration of a trust may place title to trust securities in the name of a nominee. If there is a co-trustee, consent must be obtained. But a bank or trust company in such a situation, will be absolutely responsible for any loss occasioned by the act of the nominee.

47-701.4. COMMON TRUST FUND.

(a) This concept permits the consolidation of the assets of the various trusts being administered by the bank into a common fund for investment purposes and to allocate to each trust a specific interest in this fund based on the amount of its contribution. An insured state chartered non-member bank or trust establishing a common trust fund should consult the Federal Deposit Insurance Corporation regarding its rules and regulations on such common trust funds.

(b) The Internal Revenue Code and the regulations and rulings promulgated thereunder contain certain provisions which exempt common trust funds from income taxation and instead impose the tax on each trust, whether or not the income is distributed. If there is a co-fiduciary, the bank establishing the common trust fund must secure the permission of the co-fiduciary prior to the investment of trust assets into the fund. If the bank merely acts as an investment agent in respect to the investments of one of its customers, such funds may not be placed in the common trust fund. Any state bank establishing a common trust fund shall obtain approval of the Commissioner in advance of implementation. Such approval shall not be unreasonably withheld.

47-701.5. INDIVIDUAL RETIREMENT ACCOUNT.

Section 26 U.S.C. 408 et seq. establishes Individual Retirement Accounts. A bank that has trust powers may accept deposits into Individual Retirement Accounts and may, depending on the arrangement between the depositor and the bank, exercise discretion in the investment of such account. If a bank does not have trust powers, it may accept such deposits on a "custodial" arrangement only. However, reference should be made to the above cited federal law and the regulations and rulings promulgated thereunder for the administration of such accounts.

47-701.6. KEOGH PLAN.

A bank's activities as trustee or custodian under a Keogh Plan is governed by Section 26. U.S.C. 404(e).

47-705.1. TRUST DEPOSITS AWAITING INVESTMENT.

All Trust Deposits awaiting investment or distribution which are determined to be eligible under A.C.A. § 28-69-206 for pledging of government securities to the deposit, may be secured by a blanket pledging of eligible securities to those eligible trust deposits subject to the following requirements:

(a) The total of the pledged securities must always exceed the total of the eligible trust deposits by ten percent (10%). Such trust deposits shall have a prior and preferred claim on said pledged securities.

(b) Any bank using blanket securities as collateral for eligible trust deposits must identify the securities being used and perfect a security interest in such securities for the benefit of the owners of the accounts for which the pledge is made.

(c) Trust deposits that are being collateralized must be designated in the trust department's records. The actual amount of collateralization need not be given. These records should be maintained current at all times within the bank's trust department.

47-701.7. BANK AS TRUSTEE; VOTING OF OWN SHARES.

The trust department of a state bank is theoretically subject to the dominion of the board of directors; and the trust department conceivably might in some situations be called upon to vote the bank's own shares for proposals more calculated to benefit the individual directors than the bank. Under the National Banking Act (Section 12 U.S.C. 61) a national bank cannot vote its own shares in the election of directors of the bank unless under the terms of the trust the manner in which the shares shall be voted may be determined by a donor or beneficiary of the trust and

unless such donor or beneficiary actually directs how such shares shall be voted. Moreover, if the national bank has a co-trustee, the shares may be voted by the co-trustee. The above stated national bank rule shall be applicable with respect to voting any shares of the bank held by the trust department in the election of the bank's directors. On all other proposals, the trust department is urged to weigh carefully the issues presented and any conflicts of interest which are present before deciding whether to vote or how to vote the shares .

47-701.8. TRUST POLICIES.

All state banks exercising trust powers shall adopt a trust policy setting forth, at a minimum, trust department investment practices, including investments in the obligations of the bank and its affiliates, voting practices and procedures concerning the banks stock and the stock of any affiliates of the bank, and trust account administration policies and procedures.

FIDUCIARY POWERS OF STATE BANKS AND COLLECTIVE INVESTMENT FUNDS (COMMON TRUST FUNDS)

47-701.9. FIDUCIARY POWERS OF STATE BANKS AND COLLECTIVE INVESTMENT FUNDS.

(a) Definitions. For the purposes of this regulation, the term:

"**Account**" means the trust, estate or other fiduciary relationship which has been established with a bank;

"**Custodian under a Uniform Gifts to Minors Act**" means an account established pursuant to a state law which is substantially similar to the Uniform Gifts to Minors Act as published by the America Law Institute and with respect to which the bank operating such account has established to the satisfaction of the Secretary of the Treasury that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian.

"**Fiduciary**" means a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of incompetents, managing agent and any other similar capacity;

"**Fiduciary powers**" means the power to act in any fiduciary capacity as authorized by Arkansas state law or any applicable federal law;

"**Fiduciary records**" means all matters which are written, transcribed, recorded, received or otherwise come into possession of a bank and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of a bank;

"**Guardian**" means the guardian or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws;

"**Investment authority**" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others;

"**Local law**" means the law of the state or other jurisdiction governing the fiduciary relationship;

"**Managing agent**" means the fiduciary relationship assumed by a bank upon the creation of an account which names the bank as agent and confers investment discretion upon the bank;

"**State bank**" means any bank, trust company, savings bank, or other banking institution, which is not a national bank and the principal office of which is located in the District of Columbia, any state, commonwealth, or territorial possession of the United States;

"**Trust department**" means that group or groups of officers and employees of a bank organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank, whether or not the group or groups are so named;

(b) Adoption of Policies and Procedures with Respect to Brokerage Placement Practices. Each state bank exercising investment discretion (as defined in Section 12 C.F.R. 12.2(c)) with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, such written policies and procedures should address, where appropriate,

1. the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons (including the factors considered in these determinations);

2. any acquisition of services or products, including research services, in return for brokerage commissions;

3. the allocation of research or other services among accounts, including those which did not generate commissions to pay for such research or other services; and

4. the need, in appropriate instances, to make disclosures concerning such policies and procedures to prospective and existing customers.

(c) Administration of Fiduciary Powers.

(1) (A) The board of directors is responsible for the proper exercise of fiduciary powers by the bank. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the bank's fiduciary powers as it may consider proper to assign to such directors, officers, employees or committees as it may designate.

(B) No fiduciary account shall be accepted without the prior approval of the board, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the bank has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 12 months of the last review, all the assets held in or for each fiduciary account, where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. A written record shall be made of the approval of all purchases, sales and changes of trust assets.

(C) The board of directors shall name a Trust Committee consisting of at least three (3) directors, at least one of whom shall not be an officer of the bank, to be responsible for and supervise the activities of the trust department. The Trust Committee shall meet at least monthly or as deemed necessary to adequately supervise the activities of the department. The Trust Committee shall keep full minutes of its actions and make periodic reports thereof to the board.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every state bank exercising fiduciary powers shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the bank and its trust department.

(4) The trust department may utilize personnel and facilities of other departments of the bank, and other departments of the bank may utilize personnel and facilities of the trust department only to the extent not prohibited by law. Every state bank exercising fiduciary powers shall adopt written policies and procedures to ensure that the Federal and State securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that state bank trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(5) The Trust Committee shall review the examination reports of the trust department by supervisory agencies and record its action thereon in its minutes. Nothing herein is intended to prohibit the board of directors from acting as the Trust Committee, from

designating additional officers to administer the operations of the trust department and defining their duties, or from appointing additional committees for the trust department operation and defining the duties of such committee.

(d) Books and Accounts.

(1) Every state bank exercising fiduciary powers shall keep its fiduciary records separate and distinct from other records of the bank. All fiduciary records shall be so kept and retained for such time as to enable the bank to furnish such information or reports with respect thereto as may be required by the State Bank Department. The fiduciary records shall contain full information relative to each account.

(2) Every such state bank shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(3) Solely for purposes of examination by the State Bank Department, a state bank shall retain the records required by this section for a period of three (3) years from the later of termination of the fiduciary account relationship to which the records relate or of litigation relating to such account, unless applicable law specifically prescribes a different period.

(e) Audit of Trust Department**.** A committee of directors, exclusive of any active officers of the bank, shall at least once during each calendar year and within 12 months of the last such audit, make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors and at such time shall ascertain whether the department has been administered in accordance with law, applicable regulations and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

(f) Funds Awaiting Investment or Distribution.

(1) Funds held by a state bank as trustee which are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each state bank exercising fiduciary powers shall adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term investments is obtained upon funds so held, consistent with the requirements of the governing instrument and local law. Such policies and procedures shall take into consideration all relevant factors, including but not limited to the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing such funds, and the anticipated need for the funds.

(2) Funds held in trust by a state bank as trustee awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in the commercial or savings or other department of the bank, provided that it shall first

set aside under control of the trust department as collateral security (i) direct obligations of the United States, (ii) other obligations fully guaranteed by the United States as to principal and interest, or (iii) general obligations of the State of Arkansas.

(3) The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this section are met when qualifying assets of the bank are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

(g) Investment of Funds Held as Fiduciary.

(1) Funds held by a state bank in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the bank, its directors or its officers a discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which corporate fiduciaries may invest under local law.

(2) If, under local law, corporate fiduciaries appointed by a court are permitted to exercise a discretion in investments, or if a state bank acting as fiduciary under appointment by a court is vested with a discretion in investments by an order of such court, funds of such accounts may be invested in investments which are permitted by local law. Otherwise, a state bank acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the bank.

(3) The collective investment of funds received or held by a state bank as fiduciary is governed by subsection (n) of this regulation.

(4) As a part of each examination of the trust department of a state bank the State Bank Department will examine the investments held by such bank as fiduciary, including the investment of funds under the provisions of subsection (n) of this section, in order to determine whether such investments are in accordance with law, this regulation and sound fiduciary principles.

(h) Self-dealing.

(1) Unless lawfully authorized by the instrument creating the relationship or by court order or by local law, funds held by a state bank as fiduciary shall not be invested in stock or obligations of, or property acquired from, the bank or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such

an interest, as might affect the exercise of the best judgment of the bank in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the bank or their directors, officers or employees.

(2) Property held by a state bank as fiduciary shall not be sold or transferred, by loan or otherwise, to the bank or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the bank in selling or transferring such property, or to affiliates of the bank or their directors, officers or employees, except:

(A) Where lawfully authorized by the instrument creating the relationship or by court order or by local law;

(B) In cases in which the bank has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors, provided that in all such cases the bank, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

(C) As is provided in subsection (n)(2)(H)(ii) of this regulation;

(D) Where required by the State Bank Department.

(3) Except as provided in (f) (2) of this regulation, funds held by a state bank as fiduciary shall not be invested by the purchase of stock or obligations of the bank or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law, provided that if the retention of stock or obligations of the bank or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(4) A state bank may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

(5) A state bank may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not prohibited by local law.

(6) A state bank may make a loan to an account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not prohibited by local law.

(i) Custody of Investments.

(1) The investments of each account shall be kept separate from the assets of the bank, and shall be placed in the joint custody or control of not less than two of the officers or employees of the bank designated for that purpose by the board of directors of the bank or by one or more officers designated by the board of directors of the bank; and all such officers and employees shall be adequately bonded. To the extent permitted by law, a state bank may permit the investments of a fiduciary account to be deposited elsewhere.

(2) The investments of each account shall be either:

(A) Kept separate from those of all other accounts, except as provided in subsection (n) of this regulation, or

(B) Adequately identified as the property of the relevant account.

(j) Deposit of Securities with State Authorities. Whenever the local law requires corporations acting as fiduciary to deposit securities with the state authorities for the protection of private or court trusts, every state bank in that state authorized to exercise fiduciary powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state authorities. If the state authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Reserve Bank of the district in which such state bank is located, and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the state authorities.

(k) Compensation of Bank.

(1) If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, a state bank acting in such capacity may charge or deduct a reasonable compensation for its services. When the bank is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by local law.

(2) No state bank shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the bank in the administration of any account undertaken by it.

(l) Receivership or Voluntary Liquidation of Bank.

(1) Whenever a receiver is appointed for a state bank by the Commissioner, such receiver shall, pursuant to the instructions of the Commissioner and to the orders of the court having jurisdiction, proceed to close such accounts as can be closed promptly and transfer all other accounts to substitute fiduciaries.

(2) Whenever a state bank exercising fiduciary powers is placed in voluntary liquidation, the liquidating agent shall, in accordance with the local law, proceed at once to liquidate the affairs of the trust department as follows:

(A) All trust and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practical in accordance with the orders or instructions of such court;

(B) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

(m) Surrender or Revocation of Fiduciary Powers. Any state bank which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the Commissioner a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Commissioner shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

(n) Collective Investment. (Common Trust Funds as in A.C.A. § 28-69-202)

(1) Where not in contravention of local law, funds held by a state bank as fiduciary may be invested collectively:

(A) In a common trust fund maintained by the bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under a Uniform Gifts to Minors Act.

(B) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

(2) Collective investment of funds or other property by state banks under paragraph 1 of this section (n) (referred to in this paragraph as "collective investment funds") shall be administered as follows:

(A) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency and the State Bank Department as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and

losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. Except as otherwise provided in paragraph (2)(O) of section (n) of this regulation, fund assets shall be valued at market value unless such value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours and upon request a copy of the Plan shall be furnished to any person.

(B) Property held by a bank in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (A) or (B) of paragraph (1) of section (n) of this regulation, subject to the provisions herein contained pertaining to such funds, and may qualify for tax exemption pursuant to section 584 of the Internal Revenue Code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation by reason of being described in Section 401 of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (B) of paragraph (1) of section (n) of this regulation if the fund qualifies for tax exemption under Revenue Ruling 81-100, and following rules.

(C) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank as fiduciary in a participation in a collective investment fund is proper, the bank may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is non-income producing.

(D) Not less frequently than once during each period of three (3) months, a bank administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except (i) on the basis of such valuation and (ii) as of such valuation date. No participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank and approved in such manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date. If a fund described in paragraph (1)(B) of section (n) of this regulation is to be invested in real estate or other assets which are not readily marketable, the bank may require a prior notice period not to exceed one (1) year, for withdrawals.

(E) (i) A bank administering a collective investment fund shall at least once during each period of twelve (12) months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

(ii) A bank administering a collective investment fund shall at least once during a period of twelve (12) months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and disbursements; and an appropriate notation as to any investments in default.

(iii) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. No predictions or representations as to future results may be made. In addition, as to funds described in subparagraph (A) of paragraph (1) of section (n) of this regulation, neither the report nor any other publication of the bank shall make reference to the performance of funds other than those administered by the bank.

(iv) A copy of the financial report shall be furnished, or notice shall be given that a copy of such report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in subparagraph (A) of paragraph (1) of section (n) of this regulation may be given publicity solely in connection with the promotion of the fiduciary services of the bank.

(v) Except as herein provided, the bank shall not advertise or publicize its collective investment fund(s) described in subparagraph (A) of paragraph (1) of section (n) of this regulation.

(F) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind, provided that all distributions as of any one valuation date shall be made on the same basis.

(G) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(H) (i) No bank shall have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise

specifically provided herein, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates, provided that such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this section, funds held by a bank as fiduciary for its own employees may be invested in a collective investment fund. A bank may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

(ii) Any bank administering a collective investment fund may purchase for its own account from such fund any defaulted fixed income investment held by such fund, if in the judgment of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to so purchase such investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(I) Except in the case of collective investment funds described in paragraph (1)(B) of section (n) of this regulation:

(i) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of ten percent (10%) of the then market value of the fund, provided that in applying this limitation if two or more accounts are created by same person or persons and as much as one-half (½) of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one;

(ii) No investment for a collective investment fund shall be made in stocks, bonds or other obligations of any one person, firm or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess of ten percent (10%) of the then market value of the fund, provided that this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest;

(iii) A bank administering a collective investment fund shall maintain, in cash and readily marketable investments, such percentage of the assets of the fund as is necessary to provide adequately for the liquidity needs of the fund and to prevent inequities among fund participants.

(J) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank administering the fund.

(K) (i) A bank may (but shall not be required to) transfer up to five percent (5%) of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account, provided that no such transfers shall be made which would cause the amount in such account to exceed one percent (1%) of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

(L) A state bank administering a collective investment fund shall have the exclusive management thereof. The bank may charge a fee for the management of the collective investment fund provided that the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been invested in participations in the fund. The bank shall absorb the costs of establishing or reorganizing a collective investment fund.

(M) No bank administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

(N) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the bank takes whatever action may be practicable in the circumstances to remedy the mistake.

(O) Short-term investment funds established under paragraph (1) of section (n) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies the following conditions:

(i) investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding ninety-one (91) days from the date of purchase. However, twenty percent (20%) of the value of the fund may be invested in longer term obligations;

(ii) the difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis;

(iii) assets of the fund must be held until maturity under usual circumstances; and

(iv) after effecting admissions and withdrawals, not less than twenty percent (20%) of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

3. In addition to the investments permitted under paragraph 1 of this regulation, funds or other property received or held by a state bank as fiduciary may be invested collectively, to the extent not prohibited by local law, as follows:

(A) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank fiduciary fund."

(B) (i) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(ii) On a short term basis in a variable amount note of a borrower of prime credit, provided that such note shall be maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts, provided further, that the bank owns no participation in the loans or obligations authorized under (i) or (ii) hereof, and has no interest in any investment therein except in its capacity as fiduciary.

(C) In a common trust fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, or guardian, which the bank considers to be individually too small to be invested separately to advantage. The total investment for such fund must not exceed one hundred thousand dollars ($100,000); the number of participating accounts is limited to one hundred (100), and no participating account may have an interest in the fund in excess of ten thousand dollars ($10,000), provided that in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half (½) of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one, and provided that no fund shall be established or operated under this subparagraph for the purpose of avoiding the provisions of paragraph (2) of section (n) of this regulation.

(D) In any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related, provided that such investment is not made under this subparagraph for the purpose of avoiding the provisions of paragraph (2) of section (n) of this regulation.

(E) In such other manner as shall be approved in writing by the State Bank Department.

SECTION R8

CHANGE IN CONTROL

48-317.1. TRANSFERS AFFECTING CHANGE IN CONTROL.

(a) The acquisition of a state bank by a bank holding company, or the acquisition of twenty-five percent (25%) or more of the common stock of a state bank or a bank holding company controlling a state bank subsidiary, will be considered a change in control. The ownership of more than five percent (5%) of the outstanding voting shares of a state bank is considered a controlling interest.

(b) Any person(s) or entity desiring to obtain "control" of a state chartered bank or bank holding company controlling a state bank subsidiary shall be required to file an application with the Commissioner on a form prescribed by the Commissioner containing the information set forth in A.C.A. §23-48-317(d) and such other information as the Commissioner may require.

(c) An application for a change in control which will authorize the applicant's ownership to initially exceed of twenty-five percent (25%) of the stock in a bank or bank holding company controlling a state bank subsidiary shall be accompanied by a filing fee of $1,500.

48-317.2. TIME FOR COMMISSIONER'S RULING.

Generally, the Commissioner will consider and make a decision on a change in control application within thirty (30) days of receipt of all requested information. However, the Commissioner reserves the right to extend the such period as necessary to make a complete determination on the application.

48-317.3. ANTI-COMPETITIVE ACQUISITIONS.

If a proposed change in control would result in one person, or group of associated persons, firms or corporations, controlling two or more banks competing in the same market, the Commissioner would be inclined to disapprove the transfer unless the applicant clearly demonstrated that the proposed transaction would not materially reduce competition in the market.

DIVIDENDS

48-203.1. DIVIDENDS; PRIOR APPROVAL.

Prior approval of the Commissioner shall be obtained prior to declaration and payment of any dividend by any State Bank which shall amount to seventy-five percent (75%) or more of the net profits of the bank after all taxes for the current year (annualized) plus seventy-five (75%) of the retained net profits for the immediately preceding year.

STOCK ISSUE AND TRANSFER
ISSUE OF STOCK

48-311.1. PAYMENT FOR STOCK.

Under Section 8, Article 12 of the Arkansas Constitution, corporate stock can be issued only for "money or property actually received or labor done". A bank may not issue stock against the purchaser's promissory note; and it cannot issue stock at a price less than the par value thereof. Bank of Dermott v. Measel, 172 Ark. 193; Bank of Manila v. Wallace, 177 Ark. 190; Blanks v. American So. Trust Co., 177 Ark. 832; Murray v. Murray Laboratories, Inc., 223 Ark. 907; Bank of Commerce v. Goolsby, 129 Ark. 416.

48-311.2. DISCRIMINATORY SALES OF STOCK.

The issuance of new shares at an inadequate price operates to dilute the value of outstanding shares. Therefore, even when the shareholders agree that shares may be sold free of preemptive rights the directors are under a fiduciary duty to fix a reasonable price for the shares thus sold.

48-313.1. COMMON AND PREFERRED; VOTING, NONVOTING.

A bank may issue both common and preferred stock of different classifications. It may also issue voting and nonvoting stock; but stock issued as nonvoting may nevertheless vote in respect to a dissolution, merger, consolidation or in respect to any proposal that would adversely affect the preferences, privileges and other rights annexed to the shares; nor may a stockholder's right to vote, under Article 12, Section 8, of the Arkansas Constitution, upon a proposal to increase the capital stock be abridged through the issuance of nonvoting stock.

48-313.2. FRACTIONAL SHARES; SCRIP.

Unless prohibited by the Articles of Agreement, or any amendment thereto, or By-Laws, a bank may issue a certificate for a fractional share. The creation of fractional shares sometimes occurs in connection with stock dividends. In lieu of issuing certificates for fractional shares the bank may issue scrip. A scrip certificate specifies that the holder has rights in respect to a designated number of fractional shares; and a person holding scrip certificates covering fractional interests equal to a full share may exchange such certificates for a certificate covering one share. Unless otherwise provided in the Articles or By-Laws, a fractional share shall (but scrip will not) entitle the holder to vote or receive dividends. Where scrip is issued, the directors may provide that it shall become void unless exchanged for certificates representing full shares before a specified date. Where scrip is issued it is customary to establish certain officials as a clearing house to handle the sale of the fractional interests whose holders desire to sell and to handle the purchase for those who desire to purchase additional rights for the purpose of matching them into full shares. Further, where scrip is issued, the directors may provide that it will become void if not exchanged for certificates representing full shares before a specified date; or the State Banking Board may provide that the shares for which the scrip is exchangeable may be sold by the bank and the proceeds thereof distributed to the holders of such scrip.

48-314.1. PREEMPTIVE RIGHTS.

(a) Banks chartered on or prior to May 30, 1997. Unless otherwise provided by the Articles of Agreement, or an amendment thereto, every stockholder, upon the sale for cash of any new stock of the same class as that which the stockholder already holds, shall have the right to purchase his/her pro rata share thereof at a price not exceeding the price at which it may be offered to others, which price may be in excess of par. Where the Articles of Agreement, or amendment thereto, do not prohibit such preemptive rights, the terms and conditions of such rights, and the time limit fixed for the exercise thereof may be prescribed in the Articles of Agreement, or amendment, or, if not so prescribed in the Articles of Agreement, or amendment, then in the By-Laws or in the resolution of the board of directors adopted in connection with such stock increase.

(b) Banks chartered after May 30, 1997. Except as expressly provided in the Articles of Agreement, or an amendment thereto, upon the sale for cash of any new stock whether or not of the same class as the stock which is outstanding, no stockholder shall have the right to purchase any portion thereof by reason of his/her stock ownership.

48-314.2. WAIVER OF PREEMPTIVE RIGHTS.

The waiver of preemptive rights of a shareholder, if applicable, involves a personal act by each stockholder; and such waiver cannot be accomplished by a stockholder vote at a stockholders' meeting, except for the waiver by shareholders of any applicable preemptive rights which would attach to shares which are authorized by a due vote of the shareholders to be issued upon the conversion of any convertible capital notes or pursuant to any stock option, stock purchase, employee stock ownership plan or other compensation plan authorized by A.C.A. § 23-47-101(a)(10).

48-316.1. STOCK ISSUANCE TO BE REPORTED.

The initial issuance of shares of a state bank or a bank holding company which has a state bank subsidiary pursuant to the provisions of the Articles of Incorporation, or any amendment thereto, authorizing the issuance of additional shares must be reported in each instance as and when issued.

48-316.2. TRANSFERS TO BE REPORTED.

Every transfer of outstanding shares issued by a state bank or a bank holding company which has a state bank subsidiary shall be promptly reported to the Commissioner. If an Arkansas bank holding company is a reporting company under §§13 or 15(d) of the Securities and Exchange Act of 1934, then the reporting of the transfer of shares shall only be required once each calendar year.

48-316.3. INFORMATION REQUIRED ON REPORTED TRANSFERS.

Except in the case of bank holding companies which are reporting companies, the bank or the bank holding company must certify to the Commissioner the number of shares held by the transferee prior to such transfer and the name of every person known by it to be holding any shares as nominee of the transferee, or in trust for or otherwise for the benefit of such transferee, and the number of shares so held by each such person. In the case of a bank holding company which is a reporting company under the Securities and Exchange Act of 1934, the bank holding company shall promptly report after the calendar year end all transactions by any record owner of shares (other than a nominee for an institution) which owns as of the end of such calendar year 3% or more of the outstanding stock of the bank holding company. Such report shall show for each transaction by such persons the number of shares held by such person prior to such transfer and the name of every person known by the bank holding company to be holding any shares as nominee of such person, or in trust for or otherwise for the benefit of such person, and the number of shares so held.

STOCKHOLDERS' MEETINGS

48-320.1. PROXY VOTING.

Proxy voting is authorized. A proxy, unless it otherwise provides, will expire eleven (11) months from the date of its execution. Ordinarily, a proxy would become void upon the death or insanity of the stockholder who executed the proxy. However, a proxy may be of indefinite duration if it is coupled with an interest.

48-318.1. NOTICE OF MEETING.

Written notice of a special meeting must be given to the shareholders by mail according to the bylaws, but in no event for less than ten (10) days. Written notice of an annual meeting, even though only routine matters are to be considered at the meeting, must be given at least ten (10) days before the meeting. If the capital stock or the bonded indebtedness is to be increased at either a special or annual meeting, 60 days notice is required under Article 12, Section 8 of the Arkansas Constitution. The notice of a special or annual meeting should indicate the time, place and purpose of the meeting and be sent by first class mail. The act of mailing constitutes notice. Any officer may sign the notice. Moreover, at an annual meeting, if the charter is to be amended or any other extraordinary matters submitted to the stockholders, the notice of the meeting must specify that such charter amendment or other such extraordinary matters will be submitted.

48-320.2. CUMULATIVE VOTING.

(a) For state banks incorporated on or before May 30, 1997, unless otherwise provided in the Articles or bylaws, cumulative voting for directors or on any other issues, is permitted. Thus, if there are five (5) directors to be elected, a stockholder owning fifty (50) shares could vote fifty (50) shares for each director or the stockholder could cast two hundred fifty (250) votes for one director (A.C.A. § 23-32-222). The statute authorizes cumulative voting in connection with the election of directors or on any other issue.

(b) For state banks incorporated after May 30, 1997, cumulative voting is not permitted unless and only to the extent provided for in the Articles of Incorporation of the bank.

DIRECTORS AND STOCKHOLDERS

48-322.1. BOARD OF DIRECTORS.

The affairs of every bank organized under the laws of this state shall be managed and controlled by a board of directors of not less than three (3) persons who shall be selected at such times and in such manner as may be provided by its Articles of Incorporation or bylaws. Except as required in the Articles of Incorporation or bylaws, no director of a state bank shall be required to be a stockholder of such bank.

48-322.2. OFFICER OR DIRECTOR REMOVAL.

Any officer or director found by the Commissioner to be violating state or federal law, State Bank Department Rules and Regulations, or basic principals of safety and soundness in the operation of a bank may be reported in writing to the directors of the bank of which he is an officer or director, or the Commissioner may cause such officer or director to be removed from service to the institution by means of a cease and desist order issued by the Commissioner against the bank and its board of directors. If the Commissioner reports such activities in writing to the bank's board of directors and the Board neglects or refuses to remove such officer or director, the directors may be individually liable for any loss that may occur to the bank by reason of their lack of action and may be subject to the assessment of monetary penalties for such failure by the Commissioner.

PROCEDURE AT BANK MEETINGS
DIRECTORS' MEETINGS

48-322.3. DIRECTORS' MEETINGS.

The procedure at the regular and special meeting of the Board of Directors shall be governed by the terms of the Articles of Incorporation and Bylaws of the bank; provided, however, no proxy given by a director for any meeting of the Board of Directors shall be effective for determining a quorum, voting or any other purpose.

RESERVES OF BANKS

48-202. PENALTY-FAILURE TO MAINTAIN RESERVE.

If any state bank shall fail during any period to maintain the reserve required under the Banking Code, the Commissioner may require such bank to pay a penalty computed on the basis of eight percent (8%) per annum on the amount of such deficit for the period that the deficit continues; provided that the Commissioner, in his/her discretion, may waive any penalty for a period which is less than twenty-five dollars ($25.00). This penalty shall not prevent the Commissioner, under other applicable provisions of the law, from placing a state bank in liquidation due to a violation of reserve requirements.

SECTION R9

BRANCH BANKS

48-309.2. BANK FICTITIOUS NAMES.

A state bank planning to file an application for use of a fictitious name must complete the following procedures prior to filing an application with the State Bank Department:

A) Publish legal notice of intention to file an application for use of a fictitious name one (1) time in a newspaper of statewide circulation. Such notice shall include the current corporate name, the proposed fictitious name, and the location or locations where the proposed fictitious name will be used. A copy of the legal notice must accompany the application; and
B) Request a current check of both state and federal trademark or servicemark filings on the proposed fictitious name. This request may be implemented through the Arkansas State Library, Reference Department, One Capitol Mall, Little Rock, Arkansas 72201. The fax number for the Library is 501-682-1529. Requests must be submitted in writing and the check will be performed in the exact or almost exact name as requested. Evidence must accompany the application for use of a fictitious name verifying the applicant has made a trademark or servicemark search and no trademark or servicemark exists for the proposed fictitious name.

Once the application for use of a fictitious name is received by the State Bank Department, notice of the filing of the application will be sent to all state-chartered banks by electronic transmission. Any protestants will have seven (7) days from the date the Department notice was sent to file an official protest to the application. An official protest must be provided to the Department in written form delineating the reasons for the protest and must be accompanied by a filing fee of twenty-five dollars ($25). The Bank Commissioner will make the final determination on the use of a fictitious name.

Notwithstanding the above requirements, an applicant bank that has previously filed and been approved for the use of a specific fictitious name is not required to perform the publication of notice or trademark search requirements for subsequent use of the same fictitious name. However, the bank must file an application for subsequent use of the same fictitious name at a new location.

FULL SERVICE BRANCHES;
LIMITED PURPOSE OFFICES

48-702.1. BRANCH APPLICATION PROCEDURES.

A state bank's application (on a form required by the Commissioner) for authority to establish a new branch or relocate an existing branch shall be filed with the Commissioner. The following rules govern the procedure on such applications:

(a) Notice Published by Applicant**.** The applicant shall publish a notice of the application in a newspaper of statewide circulation one (1) time at or prior to the actual filing of the application with the Commissioner. A copy of such notice must accompany the application.

(b) Fees; Investigation. The sponsors of a branch bank application are required to pay a filing fee of three thousand dollars ($3,000) as set by regulation. The Commissioner in his/her discretion may or may not require a field investigation of a branch application.

(c) Formal Protests**.** Each bank, corporation or individual that files a formal written protest to a branch bank application shall be required to pay a protest fee of one thousand dollars ($1,000). The fee must accompany or precede the formal written protest which must be received within the fifteen (15) calendar days of the actual filing of the application.

(d) Letter of Opposition. Any aggrieved bank or person may file a letter of opposition (not an official protest) to an application for a branch bank, without incurring any liability for the fee assessed to officially protesting parties.

(e) Public Hearing at Commissioner Discretion**.** The Commissioner at his/her discretion, may hold a public hearing on a branch bank application. If a hearing is to be held the Commissioner shall give notice in a newspaper of statewide circulation by publication once at least ten (10) days prior to the date of the hearing and shall notify by mail the applicant and official protestant(s) at least ten (10) days prior to the hearing. The hearing will be held in accordance with the Arkansas Administrative Procedure Act.

(f) Expiration of Approval**.** The Commissioner's Order approving a branch application shall expire one year from the date of approval unless a request for an extension has been approved in writing by the Commissioner.

48-702.2. RELOCATION OF BRANCH.

a) Any state bank may file an application with the Commissioner to relocate any existing full service branch to another location then authorized by law.

(b) If the proposed location is within the same municipality a fee of $1,000 shall accompany the application. If the proposed location is to a different municipality a fee of $2,500 shall accompany the application.

(c) An abbreviated branch application provided by the State Bank Department is required to relocate a branch within the same municipality. A bank desiring to relocate an existing branch to an area outside of the incorporated city or town in which the existing branch is located must file a branch relocation application which will consist of the information required to establish a new branch. Intent to make such a relocation shall be conveyed in writing to the Commissioner no later than twenty business days before such relocation shall occur. A relocation application will follow the same notice procedures as a new branch application, giving other banks or interested parties an opportunity to object or officially protest. Official protestants will be required to pay a fee of one thousand dollars ($1,000) as in a new branch application proceeding.

(d) The Commissioner shall approve such relocation unless it is determined the relocation is not economically feasible or will not serve the public convenience and necessity. Such relocation shall not occur until the Commissioner shall approve the relocation.

November 1, 2001

48-702.3. LIMITED PURPOSES OFFICES.

a) Any bank may establish a limited purpose office anywhere in the state to conduct non-core banking activities upon satisfaction of the notice requirement set forth in this subsection.

(b) As to each limited purpose office which a state bank proposes to establish or use, the state bank shall give not less than thirty (30) days prior written notice of its intention to establish or use the limited purpose office to the Commissioner.

(c) The notice shall be on the form prescribed by the Commissioner and shall include the following information:

(1) The location and a general description of the surrounding area;

(2) Whether the location will be owned or leased;

(3) The non-core banking activities to be conducted;

(4) An estimate of the initial cost of the limited purpose office; and

(5) Such other relevant information as may be required by the regulatory authority.

SECTION R10

BANK HOLDING COMPANIES

(RESERVED)

SECTION R11

PLAN OF EXCHANGE

48-601.1 - AUTHORITY TO ADOPT PLAN OF EXCHANGE -- NOTICE - COURT REPORTER.

The Commissioner requires that the bank, intending to adopt a Plan of Exchange, publish a legal notice of the Commissioner's fairness hearing in a newspaper of state-wide circulation. These notices must be published at least once, ten (10) days prior to the Commissioner's fairness hearing. Proof of publication must be delivered to the Commissioner's office. In addition, the Commissioner requires that the notice of the Commissioner's fairness hearing be included in the proxy material mailed to the stockholders of the bank at least ten (10) days prior to the date of the stockholders meeting at which the Plan of Exchange will be voted upon.

COURT REPORTER REQUIRED.

The Commissioner requires that the bank arrange for a court reporter to be present to transcribe the proceedings of the Commissioner's fairness hearing. The bank is responsible for the fees and costs of the court reporter and transcript of the proceedings.

DISSOLUTION AND LIQUIDATION

49-118.1 - EXECUTION AND FILING ARTICLES WITH DEPARTMENT. CERTIFICATE OF DISSOLUTION. FEES.

When the dissolution of an Arkansas state-chartered bank has been completed , the receiver shall file Articles of Dissolution with the State Bank Department in accordance with the procedures as set out by state statute and accompanied by a filing fee of two hundred dollars ($200.00).

VOLUNTARY LIQUIDATION.

Applications for the voluntary liquidation of an Arkansas state-chartered bank shall be accompanied by a filing fee of two hundred dollars ($200.00).

VOLUNTARY LIQUIDATION. SURRENDER OF CHARTER.

Prior to accepting the surrender of any bank charter, applicant must provide the Commissioner with evidence satisfactory to him that all deposits and trust accounts (if any) have been sold, surrendered, transferred, or terminated.

SECTION R12

POLICY REQUIREMENTS

LOAN POLICY

I. **LOAN POLICY.** The State Banking Board hereby requires all state banks to maintain a written loan policy. A well written loan policy will, at a minimum, address the following:

A. the bank's principal trade area;

B. the bank's legal lending limit;

C. the lending authority of the bank's lending officers;

D. the principal types of loans considered suitable for the investment of depositor's funds;

E. the maturity schedule desired for various types of loans;

F. the pricing schedule desired for various types of loans;

G. the collateral requirements desired for various types of loans; and

H. the documentation requirements for various types of loans.

Furthermore, the loan policy will describe the process by which loans shall receive prior approval or subsequent approval by a loan committee and the bank's board of directors, repricing opportunities of loans subject to renewal or extensions, procedures for the purchase and sale of loan participations, and procedures for approving loans to insiders; executive officers, directors, and principal shareholders.

A bank's loan policy, and any revisions or additions, must receive the approval of the board of directors and reviews are recommended on an annual basis.

LOAN PARTICIPATION POLICY

II. **LOAN PARTICIPATION POLICY.** A state chartered bank investing in loan participations shall maintain the following credit controls over the purchase of loans, commitments to purchase loans, and loan participations: (For the purposes of this Regulation, a "loan" includes any binding agreement to advance funds on the basis of an obligation to repay the funds.)

A. written lending policies and procedures governing these transactions;

B. an independent analysis of credit quality by the purchasing bank;

C. agreement by the obligor to make full credit information available to the selling bank;

D. agreement by the selling bank to provide available information on the obligor to the purchaser; and

E. written documentation of recourse arrangements outlining the rights and obligations of each party.

III. **GUIDELINES WHEN PURCHASING.** Prudent purchases of loans, loan participations, commitments to purchase loans, and loan portfolios are governed by the credit principles and procedures embodied in the purchasing bank's formal lending policy. The policy ordinarily entails:

A. complete analysis and documentation of the credit quality of obligations to be purchased;

B. an analysis of the value and lien status of the collateral; and

C. the maintenance of full credit information of the obligor during the term of the loan.

IV. **INDEPENDENT CREDIT ANALYSIS.** To make a prudent credit decision, a purchaser conducts an independent credit analysis to satisfy itself that a loan, loan participation, or loan portfolio is a credit which it would make directly. The nature and extent of the independent analysis is a function of the type of transaction at issue and the purchaser's lending policies and procedures. Where loans are purchased in bulk, for example, a prudent purchaser might assess the credit of the class of obligors rather than each obligor.

The acceptance by a purchaser of a favorable analysis of a loan issued by the seller, a credit rating institution, or another entity does not satisfy the need to conduct an independent credit analysis. A prudent purchaser may, however, consider such analyses obtained from the seller and other sources as factors when independently assessing a loan.

V. **TRANSFERS OF CREDIT INFORMATION.**

A. **PRUDENT TRANSFER AGREEMENTS.** The indirect relationship between the obligor and the purchaser makes it difficult for the purchaser to assess the quality of the loan without the cooperation of the selling or servicing bank. The purchaser ordinarily needs to obtain full credit information on the obligor from the selling institution to perform a continuing independent assessment of the credit. Thus, a prudent purchase or participation document would generally include an agreement by the selling or servicing bank to provide

credit information on the obligor to the purchasing bank on a continuing basis. To ensure that full credit information will be available to the seller, a loan document would ordinarily include an agreement by the obligor to furnish such information to the seller on a continuing basis.

The absence of prudent transfer agreements may effect a purchaser's ability to obtain, assess, and maintain sufficient credit information. Accordingly, the purchase of a loan or participation absent such transfer obligations may be viewed as an unsafe or unsound banking practice.

B. **SCOPE OF PRUDENT TRANSFERS.** Prudent transfers of credit information are sufficient in scope so as to enable a purchaser to make an informed and independent credit decision. Thus, prudent transfers encompass full and timely financial and nonfinancial information bearing on the quality of a loan.(*) Financial information ordinarily includes:

(1) accrual status;
(2) status of principal and interest payments;
(3) financial statements, collateral values, and lien status; and
(4) any factual information bearing on the continuing creditworthiness of the obligor.

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*References to "full" and "timely" transfers of credit information are made herein to provide supervisory guidelines on safe and sound transfers of credit information. The guidelines describe the scope of transfers required for a purchaser to make an informed and independent credit decision. Apart from such supervisory considerations, use of the terms "full" and "timely" is not intended to suggest that the terms have particular legal significance; thus, other terms may be used. The drafting and negotiation of standards governing transfers of credit information is the responsibility of bank management and counsel.

VI. **RECOURSE ARRANGEMENTS.** Repurchase agreements are subject to a bank's legal lending limit. Other direct or indirect recourse arrangements, written or oral, provided by the selling bank will be considered as extensions of credit to the selling bank and be subject to the selling bank's legal loan limit.

Prudent recourse arrangements should be documented in writing and reflected on the books and records of both the buying and selling bank.

LOAN LOSS RESERVE

VII. **LOAN LOSS RESERVE REQUIRED.** The State Banking Board requires that state banks maintain a reserve for loan losses in an amount commensurate with the risk inherent in the bank's loan portfolio. Additionally, the State Banking Board requires a bank's board of directors to analyze the risk in the bank's loan portfolio and make provisions for such loss account at least quarterly. Such review should be noted in the minutes of a bank's board of directors meetings.

INVESTMENT POLICY

VIII. **INVESTMENT POLICY.** The State Banking Board hereby requires all state banks to maintain a written investment policy. A well written investment policy will, at a minimum, address the following:

A. the bank's investment goals;

B. the type of investments considered eligible for the bank's investment portfolio;

C. the percent of each eligible type of investment desired to be maintained;

D. the maturity distribution and length of maturity desired for each type of investment;

E. the bank officers authorized to enter into a purchase and/or sale transaction;

F. the documentation requirements for each type of investment authorized;

G. the safekeeping procedures required; and

H. a list of each qualified, acceptable dealer with which bank officers may conduct investment business.

A bank's investment policy, and any revisions and additions, must receive the approval of the board of directors, and reviews are recommended on an annual basis.

ASSET/LIABILITY MANAGEMENT

IX. **ASSET/LIABILITY MANAGEMENT POLICY.** The State Banking Board hereby requires all state banks to develop and maintain written asset/liability management policies. A well written policy will, at a minimum, address the following:

A. the establishment of a goal of the ratio of rate sensitive assets to rate sensitive liabilities consistent with safe and sound banking practices;

B. the establishment of a net interest margin goal that the bank shall strive to maintain;

C. the establishment of liquidity goals to meet the needs of the bank;

D. the policy shall call for the establishment of an asset/liability committee which shall, at a minimum, monitor the adherence to the policy and recommend changes appropriate for the sound operation of the bank (the bank's board of directors may function as the committee);

E. the policy shall call for management to submit quarterly reports to the board of directors detailing the bank's ratio of rate sensitive assets to rate sensitive liabilities for time horizons as may be defined in the policy;

F. reports are to be reviewed by the board of directors no less frequently than quarterly and such reports are to be made a part of the minutes of the meeting.

A bank's asset/liability policy, and any revisions and addition, must receive the approval of the board of directors, and reviews are recommended on an annual basis.

RESOLUTION OF THE STATE BANKING BOARD **MAY 26, 1981**

SUBJECT: ADJUSTABLE RATE MORTGAGES

Be it resolved by the Arkansas State Banking Board on this 26th day of May, 1981, that the Board approves a request of Beverly J. Lambert, Jr., as State Bank Commissioner, to use his authority under Arkansas Statutes Ann. 67-501.1(o), otherwise known as the "Wild Card Statute", [A.C.A. § 23-32-701(16)], to authorize state bank's use of Adjustable Rate Mortgages in the same manner in which national banks are allowed to do so according to the rules of the Comptroller of the Currency.

This resolution was adopted at a meeting of the State Banking Board at 10:00 a.m. on the 26th day of October, 1981.

SIGNED: JAMES H. ATKINS
CHAIRMAN

APPROVED: B.J. LAMBERT, JR.
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **OCTOBER 20, 1981**

SUBJECT: ADJUSTABLE RATE MORTGAGES (CLARIFICATION)

Be it resolved by the members of the Arkansas State Banking Board that this is a resolution for clarification of a recent action by the Commissioner and the State Banking Board which authorized the use of Adjustable Rate Mortgages by state chartered banks according to the authority under Ark. Stat. 67-501.1(o), the "Wild Card Statute," [A.C.A. § 23-32-701(16)]. Under this resolution for a clarification, state chartered banks may use Adjustable Rate Mortgages should they so desire. State chartered banks will not be restricted in the use of such Adjustable Rate Mortgages to those rules or guidelines set out in the ruling of the Comptroller of the Currency on Adjustable Rate Mortgages. However, nothing in this resolution should be interpreted to relieve a state chartered bank from any compliance, rule, or regulation, concerning disclosures or any other such requirements which may be promulgated by the Federal Deposit Insurance Corporation on the use of Adjustable Rate Mortgages.

This resolution was adopted at a meeting of the Arkansas State Banking Board at 10:00 a.m. on the 20th day of October, 1981.

SIGNED: JAMES H. ATKINS
CHAIRMAN

APPROVED: B.J. LAMBERT, JR.
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **MARCH 8, 1983**

SUBJECT: BUY AND SELL OF SECURITIES FOR CUSTOMERS

The Arkansas State Banking Board, with the concurrence of the Arkansas State Bank Commissioner, and pursuant to its authority under Arkansas Statute 67-501.1(o), [A.C.A. § 23-32-701(16)], does hereby authorize Arkansas state chartered banks to buy and sell securities for its customers and others in the manner in which a national bank is authorized to do the same.

SIGNED: ELMER A. FERGUSON
CHAIRMAN

APPROVED: B.J. LAMBERT, JR.
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **MAY 17, 1984**

SUBJECT: "DUE ON SALE" CLAUSES

The State Banking Board, with the concurrence of the Bank Commissioner, and according to its authority under Ark. Stat. 67- 501.1(o), the "Wild Card" statute, [A.C.A. § 23-32-701(16)], adopts the following resolution:

Arkansas state chartered banks may enforce "Due on Sale" clauses originated or acquired by state banks. This resolution is adopted pursuant to a similar ruling adopted by the Comptroller of the Currency which permits national banking institutions to enforce "Due on Sale" clauses.

Signed this 17th day of May, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

SUBJECT: INVESTMENT IN MUTUAL FUNDS.

The State Banking Board, with the concurrence of the Bank Commissioner, and according to its authority under Ark. Stat. 67-501.1(o), the "Wild Card" statute, [A.C.A. § 23-32-701(16)], adopts the following resolution:

Arkansas state-chartered banks are permitted to invest in Money Market Funds, sold at par, so long as the portfolios of such companies consist solely of securities which are eligilbe for purchase for state chartered banks, and subject to any applocable loan limits. This resolution is adopted pursuant to a similar ruling adopted by the Comptroller of the Currency permitting such an investment by a national bank.

Signed this 17th day of May, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **JULY 17, 1984**

SUBJECT: DEBT CANCELLATION CONTRACTS

The Bank Commissioner, with the approval of the State Banking Board, and according to their authority under Ark. Stat. 67- 501.1(o), the "Wild Card" statute, [A.C.A. § 23-32-701(16)] adopts the following resolution:

Arkansas state chartered banks are hereby authorized to provide for losses arising from the cancellation of outstanding loans upon the death of borrowers. The imposition of an additional charge in the establishment of necessary reserves in order to enable the bank to enter into such debt cancellation contracts are a lawful exercise of the powers of state banks and are necessary for competitive equity with their national counterparts and necessary to the business of banking within the State of Arkansas and under Arkansas State Laws.

This order is retroactive to April 23, 1984.

Signed this 17th day of July, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **OCTOBER 16, 1984**

SUBJECT: "DUE ON SALE" CLAUSES
AMENDMENT TO MAY 17, 1984 RESOLUTION

The Bank Commissioner, with the approval of the State Banking Board, pursuant to the authority of Ark. Stat. Ann 67-501.1(o), commonly called the "Wild Card" Statute, [A.C.A. § 23-32-701(16)], and in order to maintain state chartered banks on basis of competitive equality with national banks in respect to the enforcement of due-on-sale clauses (Comptroller of the Currency, 12 CFT Paragraph 30.1, 48 Fed. Reg. 51283) and other financial institutions, hereby amends the Resolution of May 17, 1984 to read as follows:

ENFORCEMENT OF DUE-ON-SALE CLAUSES

"Arkansas state chartered banks are hereby authorized to enforce "due on sale" clauses contained in any loan contract regardless of when originated or acquired."

Signed this 16th day of October, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **OCTOBER 16, 1984**

SUBJECT: LOAN PRODUCTION OFFICES

The Bank Commissioner, with the approval of the State Banking Board, pursuant to the authority of Ark. Stat. Ann. Sec. 67- 501.1(o) commonly called the "Wild Card" Statute, [A.C.A. § 23-32-701(16)], and in order to maintain state chartered banks on the basis of competitive equality with national banks in respect to the establishment and operation of loan production offices (Comptroller's Manual for National Banks, Int. Ruling 7.7380) and other financial institutions, hereby adopts the following resolution:

LOAN PRODUCTION OFFICES

"(a) A state chartered bank may utilize the services of and compensate persons not employed by the bank for originating loans".

"(b) A state chartered bank or a subsidiary corporation may, through its employees or agents, receive loan applications at locations other than the main office or branch office of the bank; provided, the loans are approved and processed at the main office or a branch of the office, or at an office of the subsidiary located on the premises of or contiguous to the main office or branch office of the bank. Nothing in this resolution should be construed as to modify or violate branch banking statutes".

"(c) In addition, state chartered banks may conduct all activities in a properly established Loan Production Office that a nationally chartered bank may conduct.

Signed this 16th day of October, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **OCTOBER 16, 1984**

SUBJECT: INVESTMENT IN COMMUNITY DEVELOPMENT CORPORATIONS

The Bank Commissioner, with the approval of the State Banking Board, and according to his authority under Ark. Stat. 67- 501.1(o), the "Wild Card Statute," [A.C.A § 23-32-701(16)], adopts the following resolution:

Arkansas state chartered banks are hereby authorized to invest in Community Development Corporations in the same manner in which the national banks are authorized to do so. (See 12 C.F.R. 7.7479 and 12 C.F.R. 7.7480).

Signed this 16th day of October, 1984.

SIGNED: DR. RALPH RATTON
CHAIRMAN

APPROVED: MARLIN D. JACKSON
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **JULY 21, 1987**

SUBJECT: MOBILE BRANCHES

The Bank Commissioner, with the approval of the State Banking Board, and according to his authority under Ark. Stat. 67- 501.1(o), the "Wild Card Statute," [A.C.A. § 23-32-701(16)] in order to maintain state chartered banks on the basis of competitive equality with national banks regarding the establishment and operation of a mobile branch in counties having a population of 200,000 or more inhabitants, according to Act 539 of 1987, hereby adopts the following resolution:

Arkansas state chartered banks are hereby authorized to establish and operate mobile branches within counties in the state having a population of 200,000 or more inhabitants, according to Act 539 of 1987. Application for a mobile branch must use regular branch application procedures and be approved. (See Comptroller of the Currency letter dated June 4, 1987 regarding a mobile branch under Act 539 of 1987).

Signed this 21st day of July, 1987.

SIGNED:	**B.J. FORD** **VICE CHAIRMAN**	**APPROVED:**	**MARLIN D. JACKSON** **BANK COMMISSIONER**

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **JULY 21, 1987**

SUBJECT: INDEMNIFICATION TO OFFICERS, DIRECTORS

WHEREAS, pursuant to Arkansas Statute Annotated Section 64-309 (Repl. 1980) (the "State Statute"), (A.C.A. § 4-26-814) all business corporations incorporated pursuant to the laws of the State of Arkansas have the power to indemnify officers, directors and other persons for: (i) all expenses of litigation and other legal proceedings when such persons are successful on the merits, as specified in said State Statute; (ii) expenses, judgments, fines, and amounts paid in settlement of such litigation and other legal proceedings (other than derivative actions) even if such persons are not successful on the merits if they acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation; and (iii) expenses incurred in a derivative action, if such persons acted in good faith and in a manner reasonably believed in or not opposed to the best interests of the corporation, provided that the court in which such action or suit is brought shall determine, upon application, that despite such adjudication of liability, such persons are fairly and reasonably entitled to indemnity for such expenses; and

WHEREAS, the General Assembly of the State of Arkansas in the 1987 regular legislative session adopted and enacted a new Arkansas Corporate Code, the same being Arkansas Statute Annotated Sections 64-101 through 64-1706, (A.C.A. § 4-26-101 through A.C.A § 4-26-308) inclusive (the "New Code") which is to become effective for all Arkansas business corporations established on or after January 1, 1988 and for existing Arkansas business corporations whose stockholders elect to be governed by the New Code on or after January 1, 1988, and the New Code contains similar provisions of indemnification as the code which it replaces; and

WHEREAS, pursuant to such actions of the General Assembly, it is the public policy of the State of Arkansas to allow Arkansas business corporations to indemnify officers, directors and such other persons as set forth hereinabove and as more particularly specified in the State Statute and the New Code; and

WHEREAS, national banking associations organized pursuant to the laws of the United States of America are granted the power to indemnify officers, directors and other persons pursuant to an Office of the Comptroller of the Currency Interpretive Ruling promulgated at 12 C.F.R. 7.5217 and, under such Interpretive Ruling, the Office of the Comptroller of the Currency will recognize a national banking association's indemnification provisions in its Articles of Association if such substantially reflect general standards of law as evidenced by the law of the state in which a national banking association is headquartered, the law of the state in which the national banking association's holding company is incorporated, or the relevant provisions of the Model Business Corporation Act; and

WHEREAS, liability insurance for officers, directors and other persons has become increasingly cost prohibitive, uneconomical and extremely difficult to obtain for corporations in general including state and nationally chartered banking associations, and even if obtained, such insurance typically contains broad exclusions from its coverage thereby severely reducing the transfer of risk to the insurance carrier; and

WHEREAS, the Arkansas Banking Act, Arkansas Statute Annotated Section 67-101 et seq., (A.C.A. § 23-31-201), does not specifically grant the power to indemnify officers, directors and other persons of an Arkansas state chartered banking institution; and

WHEREAS, it is necessary for Arkansas state chartered banking institutions to be able to offer officers, directors and other persons protection against liability for actions taken by them on behalf of such institutions and in order for such institutions to be able to attract capable and talented individuals to serve as officers, directors and employees thereof; and

WHEREAS, pursuant to Arkansas Statute Annotated Section 67- 501.1(o), [A.C.A. § 23-32-701(16)], the State Bank Commissioner, with the approval of the State Bank Department Board, is empowered to grant Arkansas state chartered banking institutions the power to engage in any activities in which said institutions could engage were they acting as national banking associations at the time such authority is granted, including, but not limited to, the power to indemnify officers, directors and other persons in the same manner and to the same extent officers, directors and other persons of a national banking association are indemnified pursuant to said Interpretive Ruling of the Office of the Comptroller of the Currency, promulgated at 12 C.F.R. 7.5217;

NOW, THEREFORE, BE IT RESOLVED, that the Arkansas State Banking Board, under the authority granted to it pursuant to said Arkansas Statute Annotated Section 67-501.1(o), [A.C.A. § 23-32-701(16)], hereby approves and empowers the State Bank Commissioner the right to grant Arkansas state chartered banking institutions the power to indemnify officers, directors and other persons to the maximum extent as such is permitted by the Arkansas Business Corporation Act, including but not limited to the State Statute and the New Code, as the same now exists or may hereafter be amended; provided, however, that such power shall not be construed to allow the indemnification of officers, directors and other persons of an Arkansas state chartered banking institution against expenses, penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to an Arkansas state chartered banking institution; and

BE IT FURTHER RESOLVED, that the power of an Arkansas state chartered banking institution to provide indemnification to officers, directors and other persons may be specified, in accordance with the terms hereof, under any article of incorporation or bylaw provision, legal agreement or contract, vote of shareholders or disinterested directors, or other lawful means including the right of Arkansas state chartered banking institutions the power to purchase and maintain insurance on behalf of officers, directors and other persons; provided, however, that such insurance shall explicitly exclude coverage for a formal order assessing civil money penalties against a bank officer, director or employee; and

BE IT FURTHER RESOLVED, that the State Bank Commissioner shall have the power to do all things necessary to implement the intents and purposes of the above resolution and to allow Arkansas state chartered banking institutions the power to indemnify, through insurance or otherwise, officers, directors and other persons to the maximum extent as is authorized or permitted by the Arkansas Business Corporation Act, including but not limited to the State Statute and the New Code, as the same now exists or may hereafter be amended.

SIGNED:	**B.J. FORD** **VICE CHAIRMAN**	**APPROVED:**	**MARLIN D. JACKSON** **BANK COMMISSIONER**

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **JANUARY 19, 1988**

SUBJECT: DEFINITION OF PRIMARY CAPITAL (LEGAL LENDING LIMIT)

The Arkansas State Banking Board, pursuant to its authority under A.C.A. § 23-32-701(16), the "Wild Card" statute, and based upon its intention to maintain state chartered banks on the basis of equality with national banks, hereby resolves that the Bank Commissioner shall have the authority to define for legal lending purposes the terms capital and surplus as defined for national banks.

Capital and surplus is defined under 12 CFR 3.2 as "primary capital" which is the sum total of:

(1) common stock; perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 USC 1823(i), minority interests in consolidated subsidiaries, and allowances for loan and lease losses; minus intangible assets;

(2) purchased mortgage servicing rights; and

(3) mandatory convertible debt to the extent of 20% of the sum of (1) and (2) of this section.

The State Banking Board further resolves that the authority to determine the application of the above definition of capital and surplus as it applies to a state bank's legal lending limit shall initially be at the discretion of the Bank Commissioner pending revision of the State Bank Department Rules and Regulations to define the terms capital and surplus.

Signed this 19th day of January, 1988.

SIGNED: DOUGLAS SIMMONS
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **AUGUST 22, 1989**

SUBJECT: SALE OF TITLE INSURANCE

The Arkansas State Banking Board, with the concurrence of the Bank Commissioner and according to its authority under Arkansas Code Ann. Sec. 23-32-701 (16), hereby adopts the following Resolution:

Arkansas state chartered banks may act as an agent in the sale of title insurance, perform title searches, surveys, and obtain title opinions in connection with their real estate mortgage business, "as incidental to their banking business". This Resolution is adopted pursuant to a similar ruling previously authorized by the Comptroller of the Currency which permits national banking associations to perform such activities. See Comptroller of the Currency Staff Interpretive Letters No. 368, July 11, 1986; No. 377, February 6, 1987; and No. 450, September 22, 1988. See also letter from Peter Liebesman, Assistant Director, Legal Advisory Services Division, Comptroller of the Currency, May 4, 1988.

The Arkansas State Banking Board, with the concurrence of the Bank Commissioner, requires that the foregoing activities be performed only through a state bank subsidiary, with the prior approval of the Bank Commissioner.

Signed this 22nd day of August, 1989.

SIGNED: ROBERT M. HILL
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

POLICY STATEMENT **APRIL 7, 2003**

ORDER OF THE STATE BANK COMMISSIONER

SUBJECT: BANK PURCHASES OF LIFE INSURANCE

AMENDMENT TO RESOLUTION OF THE STATE BANKING BOARD DATED AUGUST 15, 1991

The Arkansas State Bank Commissioner, in accordance with his authority under A.C.A. § 23-47-101(c), hereby adopts the following policy:

Arkansas state chartered banks are authorized to purchase or take an interest in life insurance for a purpose incidental to the business of banking in accordance with the same guidelines used by the Comptroller of the Currency for national banks. For reference see OCC 2000-23 dated July 20, 2000, issued by the Office of the Comptroller of the Currency, which is reproduced as follows:

OCC 2000-23

Bank Purchase of Life Insurance

To: Chief Executive Officers of all National Banks, Department and Division Heads, and all Examining Personnel

Purpose

This circular provides general guidelines for national banks to use in determining whether they may legally purchase a particular life insurance product.

BACKGROUND

Corporate-owned life insurance (COLI) includes all life insurance that a corporation, such as a bank, purchases and owns or has a beneficial interest in. Life insurance is a financial instrument which serves many necessary and useful business purposes. However, as with most financial instruments, COLI can be complicated and is not without risk. Furthermore, COLI transactions are unique and represent activities which differ greatly from the main business activity of most corporations. Some national banks have purchased COLI without fully understanding the transactions and the associated risks.

This bulletin is designed to help national banks make informed decisions consistent with safe and sound **banking** practices. Bankers should complete a thorough analysis before purchasing COLI. This bulletin sets forth supervisory policy, including minimum standards for pre-purchase analyses, applicable to the purchase of COLI by national banks. The bulletin also includes discussions of the most common uses of COLI and the associated risks.

LEGAL AUTHORITY

The authority for national banks to purchase and hold life insurance is found in 12 USC 24 (Seventh), which provides that national banks may exercise "all such incidental powers as shall be necessary to carry on the business of **banking."** Purchases of life insurance that the OCC has found to be incidental to **banking** include key-person insurance, insurance on borrowers, insurance purchased in connection with employee compensation and benefit plans, and insurance taken as security for loans. [1] The OCC may approve other uses for bank-owned life insurance on a case-by-case basis. However, a purchase of life insurance must address a legitimate need of the bank for insurance. Life insurance may not be purchased to generate funds for the bank's normal operating expenses, for speculation, or for the primary purpose of providing estate planning benefits for bank insiders unless it is part of a reasonable compensation package. In addition, the purchase of life insurance is subject to supervisory considerations, and life insurance holdings must be consistent with safe and sound **banking** practices.

SUPERVISORY POLICY

The purchase of permanent life insurance (permanent insurance) policies subjects the policyholder to several risks. The cash surrender value (CSV) of most life insurance products is subject to credit risk. [2] Usually, the CSV is a long-term, unsecured, nonamortizing obligation of the insurance company. The CSV is also subject to several other risks, such as transaction risk, interest rate risk, liquidity risk, compliance risk, and price risk.

National banks holding life insurance in a manner inconsistent with safe and sound **banking** practices may be subject to supervisory action. This bulletin outlines supervisory considerations to be used in making this assessment. Supervisory action may include, but is not limited to, partial surrender or divestiture of affected policies.

Pre-purchase Analysis:

The safe and sound use of bank-owned life insurance depends on effective senior management and board oversight. Regardless of the bank's financial capacity and risk profile, the board must understand the role bank-owned life insurance plays in the overall business strategies of the bank.

The board's role in analyzing and overseeing bank-owned life insurance should be commensurate with the size, complexity, and risk inherent in the transaction. Although the board may delegate decision-making authority related to bank purchases of life insurance to management, the board remains responsible for ensuring that purchases of life insurance are consistent with safe and sound banking practices.

The objective of the pre-purchase analysis is to help ensure that the bank understands the risks, rewards, and unique characteristics of COLI. As such, each purchase or assumption of a beneficial interest in COLI should be preceded by a thorough pre-purchase analysis. At a minimum, the pre-purchase analysis should consider the following standards.

I. Determination of the Need for Insurance

The bank should determine the need for insurance by identifying the specific risk of loss or obligation to be insured against. The existence of a risk of loss or an obligation does not necessarily mean that a national bank can purchase or hold an interest in life insurance. For example, a national bank may not purchase life insurance on a borrower as a mechanism for effecting a recovery on obligations that have been charged-off, or are expected to be charged-off for reasons other than the borrower's death. [3] Also, a national bank should surrender or otherwise dispose of permanent life insurance acquired through debts previously contracted (DPC) within a short time frame, generally 90 days, of obtaining control of the policy. [4]

Additionally, the purchase of insurance to indemnify a national bank against a specific risk does not relieve a national bank from other responsibilities related to managing that risk. For example, a national bank may purchase life insurance to indemnify itself from the loss of a "key-person." However, "key-person" life insurance should not be used in place of, nor does it diminish the need for, adequate management or "key-person" succession planning. [5]

II. Quantification of the Amount of Insurance Needed

The bank should estimate the size of the obligation or the risk of loss and ensure that the amount of insurance purchased is not excessive in relation to the estimate. For such estimates, national banks may include the cost of insurance and the time value of money in determining the amount of insurance needed. The estimate of the amount of insurance needed should be based on reasonable financial and actuarial assumptions. In situations where a national bank purchases life insurance on a group of employees or a homogenous group of borrowers, it can estimate the size of the obligation or the risk of loss for the group on an aggregate basis and compare that to the aggregate amount of insurance purchased.

Purchasing or holding excessive permanent insurance may be an unsafe and unsound practice if it subjects the bank to unwarranted risks. Bank-owned life insurance subjects the bank to several risks which may be significant. The risks are explained in the "Risks Associated With COLI" section of this bulletin.

III. Vendor Selection

The vast majority of COLI purchases are made through vendors, either brokers/consultants or agents. Most corporations have used brokers/consultants. However, some corporations have purchased COLI through agents who work for specific insurance companies. It is also possible to purchase COLI directly from insurance carriers without using a vendor.

The role of the vendor, if any, depends on the type of vendor selected. For example, the vendor may be an agent of a specific insurance company who serves as the bank's primary contact with the insurance company, explains the company's various products, and helps the bank in making product selection. Or, the vendor may be an independent broker who has established working relationships with many insurance companies. In addition to being the bank's primary contact with the insurance company, the broker will work with the bank in selecting a carrier and in designing, negotiating, and administering/servicing the COLI.

The bank does not have to use a vendor. In deciding whether or not to use a vendor or what type of vendor to use, the bank should consider its knowledge of COLI, the amount of resources it can and is willing to spend servicing/administering the COLI, and the benefits a vendor may provide. Depending on the role of the vendor, the vendor's services can be extensive and critical to successful implementation and operation of a COLI plan. If the bank uses a vendor, it should make appropriate inquiries to satisfy itself regarding the vendor's ability to honor its commitments, which may be long term. In assessing the vendor's ability to honor its commitments, the bank should typically review the vendor's services, general reputation, experience, and financial capacity. The nature and thoroughness of the review should be determined by the size and complexity of the potential COLI purchase.

IV. Carrier Selection

COLI plans are typically of long duration and may represent significant risks for the bank. Therefore, carrier selection is one of the most critical steps in a COLI purchase. The bank should review the product design, pricing, and administrative services of the carrier(s) and compare them with the bank's needs. In addition, the bank should also review the carrier's ratings, general reputation, experience in the market place, and past performance. A broker/consultant, if used, may assist the bank in this regard.

Furthermore, before purchasing life insurance, the bank should perform a credit analysis on the selected carrier(s) in a manner consistent with safe and sound **banking** practices for commercial lending. A more complete discussion of the credit analysis is included in the "Credit Risk" section of this bulletin.

V. Review the Characteristics of the Available Insurance Products

There are a few basic types of life insurance products in the marketplace. However, these products can be combined and modified in many different ways. The resulting final product can be quite complex. The bank should review the characteristics of the various insurance products available. It should select the product or products with characteristics that match the institution's objectives and needs. To do this, the bank should thoroughly analyze and understand the products being considered.

When purchasing insurance on "key-persons" and individual borrowers, the bank should consider whether the bank's need for the insurance will be eliminated before the insured individual dies. In such cases, term or declining term insurance may be the most appropriate form of life insurance. [6]

VI. Analyze the Benefits of COLI

The bank should analyze the benefits of COLI purchases being considered. The analysis should include an assessment of how the purchase will accomplish the objective specified in "I. Determination of the Need for Insurance." It should also include an analysis of the anticipated performance of the insurance. A more complete discussion of this analysis is included in the "Transaction Risk" section of this bulletin.

VII. Determine the Reasonableness of Compensation Provided to the Insured Employee if the Insurance Results in Additional Compensation

Split-dollar insurance arrangements [7] typically provide additional compensation and/or other benefits to the employee. Before a national bank enters into a split-dollar arrangement, it should identify and quantify the compensation objective, and ensure that the arrangement is consistent with the stated objective. Also, the bank should combine the compensation provided by the split-dollar arrangement with all other compensation to ensure that total compensation is not excessive. Excessive compensation is prohibited as an unsafe and unsound practice. Guidelines for determining excessive compensation can be found in Appendix A to 12 CFR Part 30- Interagency Guidelines Establishing Standards for Safety and Soundness.

VIII. Analyze the Associated Risks and the Bank's Ability to Monitor and Respond to those Risks

Ownership of or beneficial interests in COLI may subject a national bank to several risks. These risks include: transaction, credit, interest rate, liquidity, compliance, and price. A bank's prepurchase analysis should include a thorough evaluation of these risks. An explanation of each risk is included in the "Risks Associated With COLI" section of this bulletin.

Furthermore, the pre-purchase analysis should allow a national bank to determine whether the transaction is consistent with safe and sound **banking** practices. In making this determination, a national bank should consider, among other things:

- The complexity of the transaction.
- The size of the transaction relative to the bank's capital.
- The diversification of the credit risk.
- The financial capacity of the bank.
- The financial capacity of the insurance carrier(s).
- The bank's ability to identify, measure, monitor, and control the associated risks.

In assessing the size of the transaction, a national bank should consider the CSV relative to its capital levels at the time of purchase. The bank should also consider projected increases in the CSV and projected changes in capital levels for the duration of the contract.

Consistent with prudent risk management practices, a national bank should establish internal quantitative guidelines. These guidelines generally limit the aggregate CSV of policies from any one insurance company and the aggregate CSV of policies from all insurance companies. Among other things, a bank should consider the legal lending limits (12 CFR Part 32) and concentration of credit guidelines (OCC Bulletin 95-7, dated February 9, 1995) when establishing the respective limits.

IX. Evaluate Alternatives

Some COLI purchases involve indemnifying the bank against a specific risk. For example, COLI is sometimes purchased to indemnify the bank against the potential for loss arising from the untimely death of a "key-person." As an alternative to purchasing COLI, a bank may choose to self-insure against this risk. Other COLI purchases are used to recover costs or provide for employee benefits. In these cases, a bank may choose to generate the necessary funds through investments instead of by purchasing insurance. Regardless of the purpose of COLI, a complete pre-purchase analysis will include an analysis of the alternatives.

X. Document Decision

The primary objective of this bulletin is to provide guidelines that will help national banks make informed decisions consistent with safe and sound **banking** practices. In doing so, national banks generally should consider the pre-purchase analysis just described. A national bank should maintain documentation adequate to show that the bank made an informed decision. The bank should continue to monitor that decision based on the standards set forth in this bulletin.

RISKS ASSOCIATED WITH COLI

For purposes of the OCC's discussion of risk, examiners assess banking risk relative to its impact on capital and earnings. From a supervisory perspective, risk is the potential that events, expected or unanticipated, may have an adverse impact on the bank's capital or earnings. The OCC has defined nine categories of risk for bank supervision purposes. These risks are: Credit, Interest Rate, Liquidity, Price, Foreign Exchange, Transaction, Compliance, Strategic, and Reputation. These categories are not mutually exclusive; any product or service may expose the bank to multiple risks. For analysis and discussion purposes, however, the OCC identifies and assesses the risks separately.

The applicable risks associated with COLI are: Transaction, Credit, Interest Rate, Liquidity, Compliance, and Price. The definitions of these six risks are summarized below. For complete definitions, see the "Bank Supervision Process" booklet of the Comptroller's Handbook. An analysis of how each of these risks impact the decision to purchase and hold COLI is set forth in the following paragraphs.

Transaction Risk

Transaction risk is the risk to earnings or capital arising from problems with service or product delivery. The degree of transaction risk associated with COLI is a function of a bank not fully understanding or properly implementing a transaction. In addition to following the other guidelines included in this bulletin, national banks should take two additional steps to help reduce transaction risk. Bank management should have a thorough understanding of how the insurance product works and the variables that dictate the product's performance. The variables most likely to affect product performance are the policy's interest crediting rate, [8] mortality cost, [9] and other expense charges. Typically, the most significant variable is the interest crediting rate, followed by the mortality cost. Therefore, before purchasing COLI, a national bank should analyze projected policy values (CSV and death benefits) from multiple illustrations provided by the carrier. Banks should consider using different interest crediting rates and mortality costs assumptions for each illustration.

Bank management should also understand and analyze how COLI will affect the bank's financial condition. Given the anticipated performance of the insurance, management should analyze the effect on the bank's earnings, capital, and liquidity. Management should also consider the impact on the bank's earnings and capital should the bank, for any reason, surrender the insurance before maturity at the death of the insured.

Credit Risk

Credit risk is the risk to earnings or capital arising from an obligor's failure to meet the terms of any contract with the bank or otherwise fail to perform as agreed. All life insurance policyholders are exposed to credit risk. The credit quality of the insurance company and duration of the contract are key variables. With term insurance, credit risk arises from the insurance carrier's contractual obligation to pay death benefits upon the death of the insured. Credit risk is primarily a function of the insurance carrier's ability (financial condition) and willingness to pay death benefits as promised. Credit risk may be reduced by the support provided by state insurance guaranty associations or funds. A bank's credit exposure through the ownership of term life insurance is not reflected on the bank's balance sheet.

With permanent insurance, credit risk arises from the insurance carrier's obligation to pay death benefits upon death of the insured and from its obligation to return the CSV to the policyholder upon request. The risk is similar to that with term insurance, but there are a few differences. With most permanent insurance COLI plans, the expected time frame for collection of death proceeds is extremely long term. Additionally, the CSV is an unsecured, long-term, and nonamortizing obligation of the insurance carrier. The risk inherent in the insurance company's failure to return the CSV value is, reflected on the bank's balance sheet.

Before purchasing life insurance, bank management should evaluate the financial condition of the insurance company and continue to monitor its condition on an ongoing basis. In addition to reviewing the insurance carrier's ratings, the bank should conduct an independent financial analysis consistent with safe and sound **banking** practices for commercial lending. As with lending, the depth and frequency of the analysis should be a function of the relative size and complexity of the transaction.

Interest Rate Risk

Interest rate risk is the risk to earnings or capital arising from movements in interest rates. General account [10] products expose the policyholder to interest rate risk. The interest rate risk of these products is primarily a function of the policy's interest crediting rate. Interest crediting rates are established by the insurance carrier. Over the long term, interest crediting rates are primarily a function of the carrier's investment portfolio performance. The policy's CSV is negatively affected (grows at a slower rate) by a declining interest crediting rate. Since a bank's investment in permanent insurance is recorded at the policy's CSV, the bank's earnings decline as the policy's interest crediting rate declines.

Due to the interest rate risk inherent in this product, it is particularly important that management fully understand the risk before purchasing the policy. Before purchasing permanent insurance, bank management should:

- Review the policy's past performance over various business cycles.
- Analyze projected policy values (CSV and death benefits).
- Consider having the carrier use a different interest crediting rate for each set of policy projections.

Variable or separate account [11] products may also expose the bank to interest rate risk depending on the types of assets held in the separate account. For example, if the separate account assets consist solely of Treasury securities, the bank is exposed to interest rate risk in the same way as holding Treasury securities directly in its investment portfolio. However, because the bank does not control the separate account assets, it is more difficult for the bank to control this risk. Therefore, before purchasing a separate account product, bank management should thoroughly review and understand the instruments governing the investment policy and management of the separate account. Management should understand the risk inherent within the separate account and ensure that the risk is appropriate for the bank. Also, the bank should establish monitoring and reporting systems that will enable the bank to monitor and respond to price fluctuations.

Liquidity Risk

Liquidity risk is the risk to earnings or capital arising from a bank's inability to meet its obligations when they come due, without incurring unacceptable losses. Usually, life insurance policies are not marketable and are illiquid. A secondary market for life insurance does not exist. Although the CSV of policies can be accessed quickly, it typically involves substantial loss. To access the CSV, the bank must withdraw from or borrow against the policy. This may subject the bank to surrender charges, taxes on the gain, and a tax penalty. In addition, the policyholder generally does not receive any cash flow until the death benefit is paid. The lack of liquidity in the product is more significant given that banks normally purchase life insurance policies through a conversion of a liquid asset (cash or marketable securities).

Before purchasing permanent insurance, management should recognize the illiquid nature of the product and ensure the bank has the long-term financial flexibility to hold this asset in accordance with its expected use. The inability of a bank to hold the life insurance until maturity (collection of death benefits) may compromise the success of the COLI plan.

Compliance Risk

Compliance risk is the risk to earnings or capital arising from violations of, or non-conformance with, laws, rules, regulations, prescribed practices, or ethical standards. Failure to comply with applicable laws, rules, regulations, and prescribed practices (including this bulletin) could compromise the success of a COLI program and result in significant losses for the bank as a result of fines, penalties, or loss of tax benefits. Because tax benefits are critical to the success of most COLI plans, management of a national bank should exercise caution to ensure that its plans comply with all applicable tax laws. In addition, bank management should ensure compliance with other applicable legal and regulatory standards. Other common legal and regulatory considerations include compliance with state insurable interest laws, the Employee Retirement Income Security Act of 1974 (ERISA), sections 23A and 23B of the Federal Reserve Act, 12 CFR Part 215 (Regulation O), and Appendix A to 12 CFR Part 30--Interagency Guidelines Establishing Standards for Safety and Soundness. Due to the significance of the compliance risk, a national bank may want to seek the advice of qualified counsel.

Price Risk

Price risk is the risk to earnings or capital arising from changes in the value of portfolios of financial instruments. Typically, the policyholder of separate account products assumes all price risk associated with the investments within the separate account. Usually, neither the CSV nor the interest crediting rate on separate account products is guaranteed by the carrier. The amount of price risk is dependent upon the type of assets held within the separate account.

Because the bank does not control the separate account assets, it is more difficult for the bank to control the price risk. Therefore, before purchasing a separate account life insurance product, bank management should thoroughly review and understand the instruments governing the investment policy and management of the separate account. Management should understand the risk inherent in the separate account and ensure that the risk is appropriate for the bank. Also, bank management should establish monitoring and reporting systems that will enable them to monitor and respond to price fluctuations.

Banks may purchase separate account insurance products that hold equity securities for the purpose of hedging their obligations under employee compensation and benefit plans. [12] This lessens the effect of price risk on the bank's financial statements because changes in the amount of the bank's liability will be hedged by changes in the value of the separate account assets. An example of such a relationship would be where the amount of the bank's deferred compensation obligation is measured by the value of a stock market index, and the separate account contains a stock mutual fund that mirrors the performance of that index. If the insurance cannot be characterized as an effective hedging transaction, the presence of equity securities in a separate account is impermissible.

In addition to the general considerations discussed above, which are applicable to any separate account product, further analysis should be performed when purchasing a separate account product involving equity securities. At a minimum, national banks should:

1. Analyze the bank liability being hedged (e.g., deferred compensation) and the equity securities to be held as a hedge in the separate account. Such an analysis usually documents the correlation between the liability and the equity securities, expected returns for the securities (including standard deviation of returns), and current and projected asset and liability balances.

2. Determine a target hedge effectiveness ratio and establish a method for measuring hedge effectiveness. Establish a process for altering the program if hedge effectiveness drops below acceptable levels. Consideration should be given to the potential costs of program changes.

3. Establish a process for analyzing and reporting the effect of the hedge on the bank's income statement and capital ratios. Such an analysis usually shows results both with and without the hedging transaction. O

ACCOUNTING CONSIDERATIONS

National banks should follow generally accepted accounting principles (GAAP) for financial reporting and Call Report purposes. Financial Accounting Standards Board (FASB) Technical Bulletin 85-4, "Accounting for Financial Purchases of Life Insurance" (TB 85-4) discusses how to account for investments in life insurance. The guidance set forth in TB 85-4 is generally appropriate for all forms of COLI.

Under TB 85-4, a national bank should record its interest in the policy's CSV as an "other asset." The increase in the CSV over time would be recorded as "other noninterest income." In accordance with Call Report requirements, the bank should update its interest in the CSV at least quarterly.

APPLICATION OF THE GUIDELINES

The guidelines in this bulletin are applicable to all purchases of life insurance entered into after the date of this bulletin. Purchases of life insurance policies entered into before the date of this bulletin will be evaluated in the following manner.

Policies purchased after issuance of former **Banking Circular (BC)-249,** Bank Purchases of Life Insurance

Policies purchased after February 4, 1991, should comply with either the guidelines contained in former BC-249 or with the guidelines in this bulletin.

Policies Purchased before the issuance of former BC-249, Bank Purchases of Life Insurance

Policies purchased before February 4, 1991, are provided a "safe harbor" if the following three conditions are met:

- The policies are convenient or useful in connection with the conduct of the bank's business.
- The policies do not threaten the safety and soundness of the, institution.
- The policies do not represent insider abuse or violate other laws, rules, or regulations.

If these conditions are met, no further action by the bank is needed. However, the OCC may require corrective action at any time during the bank's ownership or while it has a beneficial interest in a policy, if any of the three conditions are not met. Such determinations will be made on a case by case basis.

ORIGINATING OFFICE

For further information about this bulletin, contact the Office of the Deputy Comptroller for Credit Risk at (202) 874-5170.

APPENDIX

COMMON TYPES OF LIFE INSURANCE POLICIES

Life insurance can be categorized into two broad types, temporary insurance and permanent insurance. There are numerous variations of these products. However, basic life insurance provisions generally fall within one or a combination of the following categories.

Temporary Insurance

Temporary insurance consists of the various forms of term insurance. Term insurance provides life insurance protection for a specified time period. Death benefits are payable only if the insured dies during the specified period. If a loss does not occur during the specified term, the policy lapses and provides no further protection. All premiums are retained by the insurance company. Typically, term insurance premiums do not have a "savings component"; thus, term insurance does not usually create cash value.

Permanent Insurance

Permanent insurance is intended to provide life insurance protection for the entire life of the insured. Permanent insurance also differs from term insurance in that its premium structure includes a "savings component." Permanent insurance policy premiums have two components, the insurance cost (mortality cost, [1] administrative fees, sales loads, etc.) and the "savings component." The "savings component" typically is referred to as cash value. The policyholder may use the cash value to make the minimum premium payments necessary to maintain the death benefit protection, may access the cash value by taking out loans or making partial surrenders, or use any combination of these techniques. If permanent insurance is surrendered before death, a surrender charge may be assessed against the cash value. Generally, surrender charges are assessed if the policy is surrendered within the first 10 or 15 years. The amount of money a policyholder will receive upon surrendering a policy is referred to as the cash surrender value (CSV).

There are a variety of types of permanent insurance. Some of these include:

- Whole Life--A traditional form of permanent insurance designed so that fixed premiums are paid for the entire life of the insured. However, premiums may be paid from the CSV. Death benefit protection is provided for the life of the insured, assuming all premiums are paid.

- Universal Life--A form of permanent insurance designed to provide flexibility in premium payments and death benefit protection. The policyholder can pay maximum premiums and maintain a very high cash value. Alternatively, the policyholder can make minimal payments in an amount just large enough to cover mortality and other expense charges.

- General Account--form of whole or universal life insurance where the policyholder's cash value is supported by the general assets of the insurance company.

- Variable or Separate Account--form of whole life or universal life where the policyholder's cash value is supported by assets segregated from the general asset structure of the carrier. Theoretically, the cash value of a separate account insurance policy can go down to zero which would result in termination of the policy. The policyholder assumes all investment and price risk. The separate account is used solely for payment of policyholder benefits.

LIFE INSURANCE AS A FINANCING OR COST RECOVERY VEHICLE FOR BENEFITS PLANS

National banks may, as other corporations frequently do, use corporate-owned life insurance (COLI) as a financing or cost recovery vehicle for pre- and post-retirement employee benefits. In these arrangements, banks and other corporations insure the lives of certain employees to reimburse the corporation for the cost of employee benefits. The group of insured employees is often different from the group of employees who receive benefits. The corporation's obligation to provide employee benefits is separate and distinct from the purchase of the life insurance. The life insurance purchased by the corporation remains a corporate asset even after the employer/employee relationship is terminated. The employees, whether insured or not, have no interest in the insurance (other than their general claim against corporate assets arising from the corporation's obligation to provide the stated benefits). Permanent insurance is used for this purpose.

There are two common methods of financing or effecting cost recovery of employee benefits. The first is the cost recovery method. Under this method, the corporation sustains the cost of providing the employee benefits and the cost of purchasing the life insurance. The corporation holds the life insurance and collects the death benefit to reimburse the corporation for the cost of the benefits and the insurance.

The cost recovery method usually involves present value analysis. The corporation typically projects the dollar amounts of the expected benefits owed to employees and determines the present value of the benefits. Then, the corporation purchases a sufficient amount of life insurance on the lives of certain employees so that the gain (present value of the life insurance proceeds less the present value of the premium payments) from the insurance proceeds reimburses the corporation for the benefit payments.

The second method of financing employee benefits is known as cost offset. With this method, the corporation projects the annual employee benefit expense associated with the benefit plan. Then, the company purchases life insurance on the lives of certain employees. The amount of insurance purchased is great enough so that the income earned on the CSV offsets the benefit expense. The collection of death benefits may further enhance the company's return.

SPLIT-DOLLAR INSURANCE ARRANGEMENTS

National banks may, as many other corporations do, use split-dollar life insurance arrangements to provide retirement benefits and/or death benefits to certain employees. Under split-dollar arrangements, the employer and the employee share the rights to the policy's CSV and death benefits. The employer and the employee may share premium payments. If the employer pays the entire premium, the employee must recognize the economic value of the insurance as taxable income each year. Typically, split-dollar arrangements are set forth in written contracts that specify the terms and conditions of the agreement between the employer and employee.

Split-dollar arrangements may be structured in a number of ways. However, there are three basic types of split-dollar arrangements.

Endorsement Split-Dollar

In endorsement split-dollar arrangements, the employer owns the policy and controls all rights of ownership. The employer provides the employee an endorsement of the death benefit provided to the employee under the plan agreement. The employee may designate a beneficiary for the designated portion of the death benefit.

Under this arrangement, the employer typically holds the policy until the employee's death. At that time, the employee's beneficiary receives the designated portion of the death benefits, and the employer receives the remainder of the death benefits.

Collateral Assignment Split-Dollar

The employee owns the policy and controls all rights of ownership. Under these arrangements, the employer usually pays the entire premium or a substantial part of the premium. The employee assigns a collateral interest in the policy to the employer that is equal to the employer's interest in the policy. The employer's interest in the policy usually is equal to the premium paid by the employer or the premium plus a return on the premium.

Under this arrangement, the employee upon retirement usually has an option to buy the employer's interest in the policy. The employee usually withdraws money from the cash value or borrows against the cash value to purchase the policy. Sometimes, the employer may give the employee a bonus to purchase the employer's interest in the policy, or the employer may simply give the employee the corporation's interest in the policy as a bonus. This transfer of the employer's interest to the employee is typically referred to as a "roll-out."

If a "roll-out" is not provided or exercised, the employer does not receive its interest in the policy until the employee's death. Upon the employee's death, the employer would receive an amount equal to the premium paid or the premium plus a return on the premium. The employee's beneficiary would receive the remainder of the death benefits.

If the employee dies before reaching retirement age, the insurance policy's death benefit may be divided a number of ways. For example, the employer may receive an amount equal to the premium paid or the premium plus a return on the premium, and the employee's beneficiary would receive the remainder of the death benefit. As an alternative, the employer may retain the policy's entire death benefit.

Reverse Split-Dollar

Reverse split-dollar arrangements are very similar to collateral assignment split-dollar. The employee owns the policy and the employee provides the employer with an endorsement of part of the death benefit. The employer's interest in the policy is usually equal to or closely related to the pure insurance protection and used as "key-person" insurance. The employer's share of the premium is equal to the economic value of the pure insurance protection. The employee's interest in the policy is typically equal to or closely related to the cash value of the policy. The employee pays the remainder of the premium. This type of split-dollar arrangement is not frequently used in banks.

Split-Dollar Insurance Arrangements Used for Estate Planning Purposes or to Fund Buy-Sell Agreements

National banks may use split-dollar insurance arrangements as an estate planning tool for insiders or to fund buy-sell arrangements between the bank and insiders. However, such arrangements should be part of a reasonable compensation program. As stated in part VII of the pre-purchase analysis, national banks should combine the additional compensation provided to the insured by the split-dollar arrangement with all other compensation provided to the insured. Furthermore, national banks should ensure that total compensation provided to the insured is not excessive. Excessive compensation is prohibited as an unsafe and unsound practice. Guidelines for determining excessive compensation can be found in Appendix A to 12 CFR Part 30-Interagency Guidelines Establishing Standards for Safety and Soundness.

Typically, shareholders and other insiders who are not bank employees or directors do not provide goods or services to the bank and do not receive compensation. Therefore, national banks should only participate in such arrangements as a means of providing compensation for goods or services provided by insiders.

"KEY-PERSON" INSURANCE

A national bank may obtain life insurance to protect itself against the loss of "key-persons." As such, a national bank may purchase insurance on the life of an employee whose death would be of such consequence to the bank as to give it an insurable interest in his or her life. Certain directors of the bank may also be "key-persons."

The purpose of "key-person" insurance is to indemnify the bank against a potential loss of net income that may result from the untimely death of the insured employee. The determination of whether an individual is a "key-person" does not turn on that individual's status as an officer, but on the nature of the individual's economic contribution to the bank.

The first step in indemnifying a bank against the loss of a "key-person" is to identify the "key- person." In essence, a "key-person" is anyone whose absence for an extended period of time would result in a significant loss of net income for the bank. The next and possibly most difficult step is estimating the value of the "key-person." The value of the employee is an estimate of the potential loss of net income that the bank may incur from the untimely death of the "key-person." This value should be an estimate of the impact on net income from the loss of revenues, increased expenses, loss of operating efficiency, or other profit reductions that may result from the untimely death of the "key-person." This estimate of loss should represent a significant amount of the bank's profit or profit potential.

Determining the value of a "key-person" is not easy. Also, the most appropriate method for determining the value of a "key-person" is dependent upon the individual circumstances that created the "key-person" status. For these reasons, the OCC has not established a formula nor a specific process for estimating the value a "key-person" brings to a bank. Instead, the OCC affords bank management the opportunity to consider and analyze all relevant factors, and use their judgment to make the decision.

Additionally, "key-person" life insurance should not be used in place of, and does not diminish the need for, adequate management or "key-person" succession planning. Indeed, if a bank has an adequate management or "key-person" succession plan, its reliance on a "key-person" should decline as the person gets closer to retirement. Since a bank's reliance on a "key-person" declines as the individual moves toward retirement, the potential loss of net income which may result from the death of a "key-person" also should diminish.

As previously stated, holding permanent insurance in an amount in excess of the bank's risk of loss may be an unsafe and unsound practice. [2] Once an individual, because of retirement, resignation, discharge, change of responsibilities, or for any other reason, is no longer a "key-person" for the bank, the bank's risk of loss has been eliminated. Therefore, national banks may be required to surrender or otherwise dispose of life insurance held on a former "key-person." For this reason, the economic consequences of terminating the insurance should be considered in selecting the type of insurance and in structuring the policy. Typically, term or declining term insurance may be the most appropriate form of life insurance for "key-person" protection. It also may be appropriate to use permanent insurance that allows the substitution of insureds to provide for this protection.

LIFE INSURANCE ON BORROWERS

State law generally recognizes that a lender has an insurable interest in the life of a borrower to the extent of the borrower's obligation to the lender. In some states, the lender's insurable interest may equal the borrower's obligation plus the cost of insurance and the time value of money. Furthermore, national banks may protect themselves against the risk of loss from the death of a borrower. That protection may be provided through self-insurance in the form of debt cancellation contracts, or by the purchase of life insurance policies on borrowers.

National banks can take two approaches in purchasing life insurance on borrowers. First, a. national bank can purchase life insurance on an individual borrower for the purpose of protecting the bank specifically against loss arising from that borrower's death. Second, a national bank may employ a cost recovery technique similar to that used in conjunction with employee benefit plans. Under this method, the bank insures a group of borrowers in a homogenous pool of loans for the purpose of protecting the bank from loss arising from the death of any borrower in the homogenous pool. Examples of homogenous pools of loans include consumer loans that have distinctly similar characteristics such as automobile loans, credit card loans, and residential real estate mortgages.

Regardless of which approach is used, national banks should adhere to part 11 of the pre-purchase analysis. That is, banks should determine the risk of loss and ensure that the amount of insurance purchased is not excessive in relation to that estimate. When purchasing insurance on individual borrowers, bank management should, given the facts and circumstances known at the time of the insurance purchase, take reasonable efforts to ensure that the expected insurance proceeds match the expected repayment terms of the debt. To accomplish this, management should estimate the risk of loss over the life of the loan and match the anticipated insurance proceeds to the risk of loss. The insurance policy should be structured so that the expected death proceeds never substantially exceed the risk of loss. Generally, the risk of loss will be closely related to the outstanding principal of the debt. To properly structure the insurance policy, consideration should be given to the repayment terms of the debt. For example, for amortizing credit, banks should typically choose declining term insurance where the death proceeds are decreasing in amounts that match the loan amortization.

As previously stated, holding permanent insurance in an amount in excess of the bank's risk of loss may be an unsafe and unsound practice. [3] Once a credit is repaid, otherwise satisfied in full, or charged-off, the bank's risk of loss has been eliminated. Therefore, national banks may be required to surrender or otherwise dispose of life insurance on individual borrowers under these circumstances. For this reason, the economic consequences of terminating the insurance should be considered in selecting the type of insurance and in structuring the policy. Typically, term or declining term insurance is the most appropriate form of life insurance for insuring the lives of individual borrowers.

When purchasing life insurance on borrowers in a homogenous pool of loans, bank management should, given the facts and circumstances known at the time of the insurance purchase, take reasonable efforts to match the insurance proceeds on an aggregate basis to the total outstanding loan balances. If allowed by state law, national banks may match the insurance proceeds to the outstanding loan balances plus the cost of insurance on either a present value or future value basis. This relationship should be maintained throughout the duration of the program. When using this aggregate or group concept, it is acceptable for banks to continue to hold policies on the lives of borrowers that have been charged-off. However, loans in the homogeneous pool cannot include loans that have been charged-off. This will help ensure that national banks using this approach do not hold life insurance once the risk of loss has been eliminated.

The purchase of life insurance on a borrower is not an appropriate mechanism for effecting a recovery on obligations that have been charged-off, or are expected to be charged-off for reasons other than the borrower's demise. In the case of charged-off loans, the purchase of life insurance does not protect the bank from a risk of loss since the loss has already occurred. Since the insurance does not protect the bank from a risk of loss, the bank does not need the insurance. Holding insurance the bank does not need may subject the bank to unwarranted risks, an unsafe and unsound **banking** practice. In the case of loans the bank expects to charge-off for reasons other than the borrower's demise, the risk of loss is so pronounced that the purchase of life insurance by the bank would be purely speculative and an unsafe and unsound **banking** practice.

LIFE INSURANCE AS SECURITY FOR LOANS

National banks may take an interest in an existing life insurance policy as security for a loan. National banks also may make loans to individuals to purchase life insurance, taking a security interest in the policy. As with any other type of lending, extensions of credit secured by life insurance should be made on terms that are consistent with safe and sound **banking** practices. For instance, the borrower should be obligated to repay the loan according to an appropriate amortization schedule.

Generally, a national bank may not rely on its security interest in a life insurance policy to extend credit on terms that excuse the borrower from making interest and principal payments during the life of the borrower with the result that the bank is repaid only when the policy matures at the death of the insured. Lending on such terms is generally speculative and an unsafe and unsound **banking** practice.

Frequently, banks acquire ownership of life insurance policies through debts previously contracted (DPC). That is, banks invoke their security interest in a policy after a borrower defaults. Life insurance policies do not have a secondary market. National banks should surrender or otherwise dispose of permanent life insurance acquired through DPC within a short time frame, generally 90 days, of obtaining control of the policy. It is possible that a national bank may find a means to dispose of permanent life insurance acquired through DPC which would require a longer holding period. Therefore, a national bank may request an extended holding period from its supervisory office. In order to receive an extension, the bank should have a well-documented plan that is reasonably certain to allow the bank to dispose of the policy through means other than speculating on the death of the insured. Additionally, the extended holding period should be in the best interest of the bank.

National banks may retain temporary insurance until the next renewal date or the next premium date, whichever comes first. National banks may not continue to make premium payments on term insurance acquired through DPC. This activity is speculative and an unsafe and unsound **banking** practice.

Emory W. Rushton

Senior Deputy Comptroller for Bank Supervision Policy

[1]The appendix contains a discussion of each of these four uses of COLI.

[2]Permanent insurance and cash surrender value are described in the appendix on page 1.

[3]The purchase of life insurance on borrowers whose obligations have been charged-off, or are expected to be charged-off, is further discussed in the appendix on pages 6-7.

[4]Life insurance acquired through DPC is further discussed in the appendix on page 7.

[5]The relationship between "key-person" insurance and management succession planning is discussed in the appendix on pages 4-5.

[6]"Key-person" insurance and life insurance on borrowers are discussed further in the appendix on pages 4-7.

[7]Split-dollar insurance arrangements are defined and discussed in the appendix on pages 3-4.

[8]The interest crediting rate refers to the gross yield on the investment in the insurance policy, i.e., the rate at which the cash value increases before considering any deductions for mortality cost, load charges, or other costs that are periodically charged against the policy's cash value. Insurance companies frequently disclose a current interest crediting rate and a guaranteed minimum interest crediting rate. The guaranteed rate may be less than the current rate. As a result, the potential exists for future declines in the interest crediting rate.

[9]Mortality cost represents the cost imposed on the policyholder by the insurance company to cover the amount of pure insurance protection for which the insurance company is at risk.

[10]General account products are defined in the appendix on page 2.

[11]Variable or separate account products are defined in the appendix on page 2.

[12]An economic hedge exists when changes in the value of the liability or other risk exposure being hedged are offset by counterbalancing changes in the value of the hedging instrument.

[1]Mortality cost represents the cost imposed on the policyholder by the insurance company to cover the amount of pure insurance protection for which the insurance company is at risk. With term insurance, the insurance company is generally exposed to risk of loss for the entire face amount of the policy. With permanent insurance, the net amount at risk for the insurance company is the difference between the policy's death benefit and the cash value,

[2]See part (II), Quantification of the Amount of Insurance Needed, of the pre-purchase analysis on page 4 of the bulletin.

[3]See part (II), Quantification of the Amount of Insurance Needed, of the pre-purchase analysis on page 4 of the bulletin.

SIGNED: **FRANK WHITE**
BANK COMMISSIONER

RESOLUTION OF THE STATE BANKING BOARD **FEBRUARY 17, 1994**

SUBJECT: INVESTMENT IN COMMUNITY DEVELOPMENT CORPORATIONS AMENDMENT TO OCTOBER 16, 1984, RESOLUTION

The Bank Commissioner, with the approval of the State Banking Board, and according to his authority under A.C.A. § 23-32-701(16) adopts the following resolution:

A resolution passed by the Arkansas Bank Commissioner and the Arkansas State Banking Board on October 16, 1984, authorizing Arkansas state banks to invest in Community Development Corporations in the same manner in which national banks are authorized to do so is amended to include increased percentages for maximum investments in Community Development Corporations as established by Part 24 of Title 12, Code of Federal Regulations as added December 31, 1993, in 58 Federal Register 68464, December 27, 1993.

Signed this 17th day of February, 1994.

SIGNED: BOB WILLETT
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **SEPTEMBER 21, 1995**

SUBJECT: MERGER OR CONSOLIDATION

The Arkansas State Banking Board, with the concurrence of the Bank Commissioner and according to its authority under A.C.A. §. 23-32-701(16), hereby adopts the following Resolution:

Arkansas state chartered banks may merge or consolidate, by vote of two thirds of each class of its capital stock, with a stock federal or state savings association, in the same manner in which a national bank is authorized, pursuant to Title V of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 215c(a)). Merger and/or consolidation provisions of state and federal law and regulations will be applied in consideration of such application.

Signed this 21st day of September 1995.

SIGNED: ROBERT M. HILL
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **AUGUST 8, 1996**

SUBJECT: MOBILE BRANCHES

The Arkansas State Banking Board, with the concurrence of the Bank Commissioner and according to its authority under A.C.A. §. 23-32-701(16), hereby resolves to repeal a resolution adopted previously by the Board on July 21, 1987 entitled Mobile Branches.

THE RESOLUTION IS REPEALED

Signed this 8th day of August 1996.

SIGNED: LARRY NELSON
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

RESOLUTION OF THE STATE BANKING BOARD **AUGUST 8, 1996**

SUBJECT: INVESTMENT, LIMITED LIABILITY COMPANIES

The Arkansas State Banking Board, with the concurrence of the Bank Commissioner and according to its authority under A.C.A. §. 23-32-701(16), hereby adopts the following resolution:

Arkansas state chartered banks may invest in a limited liability company (LLC) to the same extent that a nationally chartered bank may do so provided such investment must be made through a subsidiary and will be subject to the restrictions on investments and loans to bank subsidiaries contained in A.C.A. § 23-32-701. The standards a state chartered bank are subject to for investing in a limited liability company are the same investment standards or requirements that must be met by national banks. These standards, as set by the Office of the Comptroller of the Currency, that must be satisfied by the investing bank are:

1. The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking.

2. The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard.

3. The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligation of the enterprise.

4. The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

(See Office of the Comptroller of the Currency Interpretive Letter No. 692, November 1, 1995)

Signed this 8th day of August 1996.

SIGNED: LARRY NELSON
CHAIRMAN

APPROVED: BILL J. FORD
BANK COMMISSIONER

* This policy or resolution was adopted by the Arkansas State Banking Board prior to the enactment of the Arkansas Banking Code of 1997.

POLICY STATEMENT **MAY 3, 2000**

ORDER OF THE STATE BANK COMMISSIONER

SUBJECT: FINANCIAL SUBSIDIARIES

The Arkansas Bank Commissioner, pursuant to his authority under A.C.A. § 23-47-101(37)(c), hereby authorizes Arkansas state banks to conduct permitted activities through a "financial subsidiary" in the same manner and with the same requirements as those provided for national banks by the Office of the Comptroller of the Currency. State banks that wish to conduct any of the permitted activities through a financial subsidiary must submit an application and receive approval from the Bank Commissioner, as well as any other licensing requirements prior to entering into such activity.

Signed this 3rd day of May 2000.

SIGNED: FRANK WHITE
BANK COMMISSIONER

POLICY STATEMENT **SEPTEMBER 5, 2000**

ORDER OF THE BANK COMMISSIONER

The Arkansas Bank Commissioner, pursuant to his authority under A.C.A. § 23-47-101(37)(c), hereby authorizes Arkansas State banks to engage in the activity of foreign branch banking in accordance with 12 U.S.C. 601 et seq.

State Banks preparing to engage in such activity must contact the State Bank Department regarding application requirements.

Signed this 5th day of September 2000.

SIGNED: FRANK WHITE
BANK COMMISSIONER

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ADMINISTRATIVE POLICY #001

BILL J. FORD, BANK COMMISSIONER **RETAIN FOR**
NOVEMBER 16, 1987 **FUTURE**
SUBJECT: ELIGIBLE BANK INVESTMENTS **REFERENCE**
*** ***

Administrative Policy #001 is being issued to all State chartered banks in regard to the legality of investing in certain instruments such as CMO's (Collateralized Mortgage Obligations), CMO residuals, REMICs and SMBS's (Stripped Mortgage-Backed Securities). The purpose of the directive is to state the position and requirements of the Bank Department with respect to these investment vehicles.

Before consideration can be given to investment into any of these non-traditional instruments it will be necessary for the Board of Directors to approve amendments to the bank's investment policy.

COLLATERALIZED MORTGAGE OBLIGATIONS (CMO'S)

A state chartered bank may only invest in CMO's in which the collateral consists of securities in which repayment of both principal and interest is 100% guaranteed by an agency of the United States government. CMO's which meet this criteria may be purchased without legal lending limitations so long as the CMO meets the definition of "Mortgage related securities" as defined in section 101 of the Secondary Mortgage Market Enhancement Act of 1984 which has been codified at 15 U.S.C. S 78 c(a) (41). The definition includes any security which satisfied all of the following requirements:

- The security must be rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

- The security must be secured by one or more promissory notes or certificates of interest or participations in such notes.

- The security must provide for payments of principal in relation to payments or reasonable projections of payments on the underlying notes or certificates.

- The notes or certificates underlying the CMO's must be directly secured by a first lien on a single parcel of real estate, stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home.

- The underlying notes or certificates must have been originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority or by a mortgagee approved by the Secretary of Housing and Urban Development.

Banks making such investments are required to maintain the following information in the files of the bank:

(1) The CMO bond instrument or a descriptive safekeeping receipt identifying the specific instrument certifying that the described instrument is being held for subject bank;

(2) A prospectus describing the trust indenture. A bank may wish to obtain monthly documentation reflecting the unpaid balances and performance of the collateral held by the trust.

Although the CMO's described may be obtained without limitation, management and the board of directors are reminded of the sound tenet of banking of diversification of risk. Consideration should also be given to the liquidity needs of the bank prior to making such investment.

Investments in CMO's which are backed by any other collateral <u>are subject to</u> legal lending limitations.

<u>CMO AND REMIC RESIDUALS</u>

Residual and stripped coupon securities represent packages of various combinations of selected cash flows from a pool of mortgage receivables (either mortgage loans or mortgage-backed securities) and are typically issued under a Real Estate Mortgage Investment Conduit (REMIC) or collateralized mortgage obligation (CMO) structure.

CMO and REMIC Residual instruments reflect an ownership interest in the trust and do not indicate an investment in principal or a stated interest rate. The investor is purchasing an interest in the trustee's ability to earn money sometime in the future. It is the opinion of the State Bank Department that such investments represent an equity interest in the trust, are speculative in nature, and, as such, **<u>are not considered eligible</u>** investments for state chartered banks.

STRIPPED MORTGAGE-BACKED SECURITIES (SMBS)

Principal-only strips (P/O) represents an undivided percentage ownership interest in the principal portion of the pass through certificate. Banks may invest in principal-only strips provided that payment of the principal portion of the underlying security is 100% guaranteed by an agency of the U. S. Government. Banks that invest in these investments must maintain the same documentation as required for CMO's.

Since a P/0 is essentially a "zero coupon" security, its market value may be extremely volatile in a changing interest rate environment. A bank must have sufficient liquidity to be able to hold the instrument to term despite wide swings in its market value or must have the expertise to react quickly to interest rate changes.

Interest-only strips (I/O) have many of the same characteristics as CMO Residuals. Such investment in future interest, which may or may not be realized, is considered speculative. These instruments **are not considered eligible** investments for state chartered banks, **unless** utilized for interest rate hedging purposes.

Any hedging activity must be supported by a board approved hedging policy that sets forth parameters under which the activity will take place. The board of directors must establish limitations applicable to the hedging activity and the board of directors, a duly authorized committee of the board, or the bank internal auditors must review periodically (at least monthly) the hedging position to ascertain performance with the limitations set forth in the policy.

If a bank holds these securities as a hedge, the current accounting guidance on hedging is primarily contained in FASB Statement No. 80, Accounting for Futures Contracts, which includes two criteria that must be met for a futures contract to qualify as a hedge:

(1) The item to be hedged exposes the bank to interest rate risk.

(2) The futures contract reduces that exposure and is designated as a hedge.

Investment in Interest-only strips in any manner other than provided above will be considered an unsafe and unsound banking practice.

Interest-only strips (I/0) investments **are subject to the bank's legal lending limit**.

ACCOUNTING

Information will be forthcoming from the appropriate federal supervisory agency regarding the recommended accounting for Call Report purposes of the various instruments discussed.

* *

ADMINISTRATIVE POLICY #002 - *REVISED*
BILL J. FORD, BANK COMMISSIONER — **RETAIN FOR FUTURE REFERENCE**
MAY 31, 1997
SUBJECT: BANK HOLDING COMPANY SUPERVISION

* *

The Bank Commissioner requires all bank holding companies owning Arkansas state-chartered banks to submit certain applicable supervisory reports. A **certified copy** of the report(s) submitted to the Federal Reserve Bank is acceptable for compliance with this Order. These forms and their instructions may be obtained via the internet from The Federal Reserve Board at the following address:
http://www.federalreserve.gov/boarddocs/reportforms/CategoryIndex.cfm?Whichcategory=1.

The following is a list of bank holding company reports that your institution may be required to file. Retain the list for periodic review as the status of your institution may change.

Report:	**FR Y-6** -- Annual Report of Bank Holding Companies.
Frequency:	Annually, within 90 days following calendar year end.
Reporting Criteria:	All registered bank holding companies.

Report:	**FR Y-10** -- Bank Holding Company Report of Changes in Organizational Structure.
Frequency:	The report must be filed within 30 calendar days of the change.
Reporting Criteria:	All top-tier bank holding companies. A report is required only in the event of changes.

Report: **FR Y-8** -- Report of Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

Frequency: Quarterly as of the last calendar day of March, June, September and December, and is to be submitted within 30 calendar days after the report date. Refer to general instructions for specific submission date information..

Reporting Criteria: All top-tier bank holding companies, including financial holding companies. Reports must be signed by an authorized officer of the holding company.

Report: **FR Y-9C** -- Consolidated Financial Statements for Bank Holding Companies.

Frequency: Quarterly, within 45 days following the last day of March, June, September, and December.

Reporting Criteria: Bank holding companies with total consolidated assets of $150 million or more. Additionally, all multibank holding companies with debt outstanding to the general public[1] or that are engaged in a nonbank activity[2] must file this report. When bank holding companies own or control, or are owned or controlled by, other bank holding companies, only the top-tier holding company must file this report for the consolidated holding company organization, except that lower-tiered bank holding companies that have total consolidated assets of $1 billion or more must also file this report.

Report: **FR Y-9LP** --Parent Company Only Financial Statements for Large Bank Holding Companies.

Frequency: Quarterly, within 45 days following the last day of March, June, September, and December.

Reporting Criteria: Parent companies of large bank holding companies. Large bank holding companies are defined as bank holding companies with total consolidated assets of $150 million or more, or multibank holding companies with debt outstanding to the general public[1] or that are engaged in a nonbank activity.[2] When such bank holding companies are tiered bank holding companies, separate reports are also to be filed by each of the subsidiary bank holding companies.

Report: **FR Y-9SP** -- Parent Company Only Financial Statements for Small Bank Holding Companies.

Frequency: Semiannually, within 45 days following the last day of June and December.

Reporting Criteria: Parent companies of small bank holding companies. Small bank holding companies are defined as bank holding companies that have one subsidiary bank and have total consolidated assets of less than $150 million, or multibank holding companies with total consolidated assets of less than $150 million, without any debt outstanding to the general public[1] and not engaged in a nonbank activity.[2] When such bank holding companies are tiered bank holding companies, separate reports are also to be filed by each of the subsidiary bank holding companies.

Report: **FR Y-11Q** -- Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

Frequency: Quarterly, within 45 days following the last day of March, June, September, and December.

Reporting Criteria: Bank holding companies with total consolidated assets of $1 billion or more

- or -

bank holding companies with total consolidated assets between $150 million and $1 billion that meet one or more of the following criteria:

(a) the assets of the holding company's nonbank subsidiaries constitute five (5) percent or more of the holding company's total consolidated assets;

(b) the net income of the holding company's nonbank subsidiaries constitutes five (5) percent or more of the holding company's total consolidated net income;

(c) the holding company's investments in and/or loans and advances to nonbank subsidiaries exceed five (5) percent of the holding company's total consolidated equity capital.

When a bank holding company owns or controls other bank holding companies (that is, a multi-tier bank holding company), only the top tier of the holding company is required to file this report.

Report: **FR Y-11AS** -- Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies by Type of Nonbank Subsidiary.

Frequency: Annually, within 45 days following calendar year end.

Reporting Criteria: Same as for FR Y-11Q.

Report: **FR Y-11I** -- Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies.

Frequency: Annually, within 45 days following calendar year end.

Reporting Criteria: Must be filed by each bank holding company with nonbank subsidiaries. Bank holding companies that are "qualified foreign banking organizations" are not required to file this report. A subsidiary, for purposes of this report, is defined by Section 225.2 of Federal Reserve Regulation Y, which generally includes companies 25 percent or more owned or controlled by another company. Reports must only be filed for subsidiaries that are part of the bank holding company's organization structure as of the close of business on December 31 of the calendar year for which the report is being filed. Reports should not be filed for subsidiaries that were divested or liquidated during the year.

For further information contact Carolyn Bearden, Bank Review Administrator for Bank Holding Companies, at (501) 324-9019.

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[1] Debt outstanding to the general public is defined to mean debt held by parties other than financial institutions, officers, directors, and controlling shareholders of the banking organization or their related interests.

[2] Engaged in certain nonbanking activities is defined to mean engaged in a nonbank activity (either directly or indirectly) involving financial leverage or engaged in credit extending activities. Financial leverage is the use of debt to supplement the equity in a company's capital structure.

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ADMINISTRATIVE POLICY #003
FRANK WHITE, BANK COMMISSIONER **RETAIN FOR**
ISSUED: MARCH 30, 1988 **FUTURE**
REVISED: SEPTEMBER 30, 2001 **REFERENCE**
SUBJECT: RISK RATING/RESERVE ALLOCATION

* *

OVERVIEW

The quality of the loan portfolio of many banks has been dramatically affected by recent developments in economic affairs of the state and region. In an effort to prudently assess the quality of the loan portfolio, bankers have developed a wide array of methods to review loans on an ongoing basis. Examiners assess the quality of a bank's loan portfolio in an attempt to determine the associated risk and to determine that adequate reserves are maintained.

Administrative Policy #003 defines a risk rating system and reserve allocation calculation method that is recommended for implementation by bank management. The State Bank Department **does not require** that the system defined herein be adopted, but **does require** that a system be implemented. Any system implemented by the bank will be subject to review and analysis by examiners during regularly scheduled examinations and/or visitations.

The risk rating system and reserve allocation calculation method described is recommended for all banks which have total loans in excess of ten million dollars ($10,000,000). It is designed to aid management and the Board of Directors in (1) the management of risk associated with the loan portfolio, (2) the identification of "problem" loans, and (3) maintaining the adequacy of the bank's reserve allocation.

Prior to the implementation of any risk rating/reserve allocation program, it is essential for the bank's Board of Directors to approve the program and consider amendments to the bank's loan policy.

* *

RISK RATING GUIDELINES

All loans, with the exception of loans identified as monthly-pay, consumer- type loans, must be assigned a risk rating. A numbering system from one (1) to six (6) is utilized for the guidelines contained herein. Banks presently utilizing other numbering schemes may wish to continue to use the system already in place. A numbering system is necessary to monitor the quality of the loan portfolio and address the adequacy of the loan loss reserve account.

This rating system is based on the potential risk associated with each loan. The initial rating is assigned by the loan officer and should be reflected on the loan application. The loan review personnel or the individual loan officer is responsible for periodic reviews and the assessment of the adequacy of the rating during the life of the loan. Any differences in ratings between the loan officer and loan review personnel are to be resolved by the loan review committee and the appropriate rating entered into the loan system. Reviews and updates must be made on a quarterly basis, or more frequently if appropriate. Reviews should be noted at least quarterly in the minutes of the meeting of the bank's Board of Directors.

The risk ratings for this system appear below and a definition of each follows. The risk rating system should be implemented in the main computer system to provide for an automated monitoring program. A field in the loan program can be designated to carry the risk rating code. **The bank's EDP/Information Systems servicer can provide this field on the existing loan program.**

1 - Excellent
2 - Good
3 - Moderate
4 - Watch
5 - Substandard
6 - Doubtful

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DEFINITIONS

RISK RATING: 1 - EXCELLENT

A loan secured by a bank's own certificate of deposit, U.S. Government securities, or governmental agency securities. The loan is properly structured with maturities not to exceed one (1) year. No credit or collateral exceptions exist and the loan adheres to the bank's loan policy in every respect. The ability of the borrower to repay is excellent as evidenced by cash flow analysis or the conversion of liquid assets to cash.

RISK RATING: 2 - GOOD

Loans to established borrowers that represent a reasonable credit risk. A financial analysis displays a satisfactory financial condition and earnings ability along with sound asset quality and cash flow capacity to meet debt obligations in a timely manner. Loans in this category are generally limited to short to medium term maturities. The borrower exhibits a good ability to service the debt based on prior history and an ability to service debts through the conversion of liquid assets, cash flow or, perhaps, letters of credit from quality financial institutions.

RISK RATING: 3 - MODERATE

Loans in this category are considered to have satisfactory asset quality and are made to borrowers with proven earnings history, liquidity or other adequate margins of credit protection. Loans are considered collectible in full but may require some additional supervision. Loans in this category are evidenced by a level of slow reduction along with some extensions and/or renewals outside of the original payment plan. The borrower is capable of absorbing normal setbacks without the advent of failure. The ability to repay is considered average through the conversion of liquid assets, cash flow or co-signors ability to reduce the debt.

RISK RATING: 4 - WATCH

Loans in this category are presently protected from apparent loss, however, weaknesses do exist which could cause future impairment of repayment. These loans require more than an ordinary amount of supervision and may exhibit potential weaknesses due to questionable trends in financial position, high debt to worth ratios, or questionable or unproven management capabilities. Loans may be made to new or expanding businesses or borrowers whose ability to repay is considered only average. Collateral values afford marginal protection and the collateral may not be considered immediately marketable. Loans in this category may exhibit early signs of problems such as overdue status, extensions, or overdrafts of demand accounts. Loans in this category may also exhibit weak origination and/or servicing policies and may contain documentation deficiencies. This risk rating category may also be used for new or untested borrowers.

RISK RATING: 5 - SUBSTANDARD

Loans in this category are characterized by deterioration in quality exhibited by any number of well defined weaknesses requiring corrective action. The weaknesses may include, but are not limited to: high debt to worth ratios, declining or negative earnings trends, declining or inadequate liquidity, improper loan structure, questionable repayment sources, lack of well-defined secondary repayment source, and unfavorable competitive comparisons. Such loans are no longer considered to be adequately protected due to the borrower's declining net worth, lack of earnings capacity, declining collateral margins and/or unperfected collateral positions. A possibility of loss of a portion of the loan balance cannot be ruled out. The repayment ability of the borrower is marginal or weak and the loan may have exhibited excessive overdue status or extensions and/or renewals.

RISK RATING: 6 - DOUBTFUL

Loans in this category exhibit the same weaknesses found in the Substandard loan, however, the weaknesses are more pronounced. Such loans are static and collection in full is improbable. However, these loans are not yet rated as loss because certain events may occur which would salvage the debt. Among these events are: acquisition by, or merger with, a stronger entity, injection of capital, alternative financing, liquidation of assets, or the pledging of additional

collateral. The ability of the borrower to service the debt is extremely weak, overdue status is constant, the debt has been placed on non-accrual status, and no definite repayment schedule exists.

* *

MANAGEMENT AND BOARD REPORTS

A risk rating system provides management and the Board of Directors the ability to monitor and assess the quality and soundness of the lending function of the bank and compliance with rules and regulations regarding the adequacy of the loan loss reserve account. Effective management of the loan portfolio is essential if the goals and objectives of the bank's Board of Directors are to be met. Proper implementation of the program provided herein will ensure that information is available for management and the Board to properly analyze its reserve adequacy. The program should be supported by the following reports:

A. Monthly "problem" loan reporting system (risk rating)
B. Monthly list of recommended risk rating changes
C. Monthly list of loans to be placed on non-accrual
D. Monthly list of loans to be charged-off
E. Monthly, or quarterly, progress reports of all weak or classified loans
F. Monthly overdue loan report
G. Monthly list of loans that exceed supervisory loan-to-value limits

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RESERVE ALLOCATION GUIDELINES

Management has the responsibility to use reasonable judgment to arrive at an appropriate loan loss reserve which is adequate and which is based upon reliable information. Historical data, combined with the results of a comprehensive review of the present loan portfolio, provides a prudent basis for determining the adequacy of the loan loss reserve account. Examiners will review the appropriateness of the procedures and methodology utilized by management in attaining the reserve balance. Examination classifications should only be changed during subsequent examinations or visitations, however, management may vary the amount of reserve based on current information.

The Board of Directors has the responsibility of determining the amount of provision for loan losses to be allocated on a monthly, or quarterly, basis. Such determination should be based on the balance of loans in each of the six (6) risk rating categories; the minimum and maximum amounts of the reserve allocations required based on a pre-determined percentage; the specific allocations required on previously identified "problem" loans; and the allocations to be assigned to current and overdue installment loans.

Additional information that the Board may find beneficial in the determination of the adequacy of the reserve includes: the loan portfolio composition; any identifiable concentrations of credit; economic conditions on the local and regional levels; the adequacy of the lending policy and the loan administration function (documentation); and the potential for major losses.

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SAMPLE SYSTEM

The following example provides a system to determine the adequacy of the bank's loan loss reserve account. The information needed is obtained from the risk rating program.

RISK RATING/ CATEGORY	SUGGESTED * ALLOCATION	PRINCIPAL BALANCE	REQUIRED RESERVE
COMMERCIAL LOANS: RESERVE ALLOCATION:			
1 - EXCELLENT	0.000%*	1,500,000	00,000
2 - GOOD	0.275%*	8,000,000	22,000
3 - MODERATE	0.750%*	12,500,000	93,750
4 - WATCH	1.000%*	3,000,000	30,000
5 - SUBSTANDARD	15.000%*	750,000	112,500
6 - DOUBTFUL	50.000%*	50,000	25,000
COMMERCIAL LOANS - SUB TOTALS		25,800,000	283,250
ADD: SPECIFIC ALLOCATIONS**		200,000	50,000
SUB: PREVIOUS ALLOCATIONS**		(200,000)	(20,000)
COMMERCIAL LOANS - TOTALS		$25,800,000	313,250
MONTHLY PAY/CONSUMER LOANS: RESERVE ALLOCATION:			
CURRENT	0.225%*	6,000,000	13,500
OVERDUE			
(31-90 DAYS)	7.500%*	200,000	15,000
(OVER 90 DAYS)	37.500%*	25,000	9,375
INSTALLMENT LOANS - TOTALS		6,225,000	37,875
LOAN PORTFOLIO TOTALS:		32,025,000	351,125
BALANCE OF RESERVE ACCOUNT		334,520	
AMOUNT IN EXCESS OF RESERVE REQUIREMENT: (DEFICIT)		(16,605)	
+/-10% = ACCEPTABLE RANGE			316,013 to 386,238

*Suggested allocation based on average of acceptable ranges. Systems may vary. Percentages are to be determined by the bank's Board.

**Loans previously risk rated one (1) through (6) for which specific reserve allocations have been assigned. The adjustment is necessary to prevent duplications. Specific allocations must be fully documented.

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ADMINISTRATIVE POLICY #004

BILL J. FORD, BANK COMMISSIONER
AUGUST 22, 1988
SUBJECT: NONACCRUAL OF INTEREST

RETAIN FOR FUTURE REFERENCE

* *

NONACCRUAL OF INTEREST

Banks shall not accrue interest or discount on:

1) any asset which is maintained on a cash basis because of deterioration in the financial position of the borrower;

2) any asset for which payment in full of principal and interest is not expected; or

3) any asset upon which principal or interest has been in default for a period of 90 days or more unless it is **both** well secured **and** in the process of collection. A nonaccrual asset may be restored to an accrual status when none of its principal and interest is past due.

If the principal or interest on an asset becomes due and unpaid for 90 days or more, the asset should be placed in nonaccrual status as of the date it becomes 90 days past due. Interest accrued to date on a loan placed in nonaccrual status must be reversed from current year earnings. The loan must remain in nonaccrual status until it meets the criteria for restoration to accrual status described above.

DEFINITIONS

1. A debt is **well secured** if it is secured:

a) by collateral in the form of liens on or pledges of real or personal property, including securities, that have a realizable value sufficient to discharge the debt (including accrued interest) in full; or

b) by the guaranty of a financially responsible party.

2. A debt is **in the process of collection** if collection of the debt is proceeding in due course either through legal action, including judgement enforcement procedures; or, **in appropriate circumstances**, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status within 105 calendar days of its due date.

No loan past due 105 days or more will be considered in process of collection.

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ADMINISTRATIVE POLICY #005

BILL J. FORD, BANK COMMISSIONER **RETAIN FOR**
DATE: FEBRUARY 15, 1989 **FUTURE**
SUBJECT: STRATEGIC PLANNING **REFERENCE**
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Recent legislative action which provides for the expansion of banking through expanded branching powers and regional acquisitions and efforts to repeal antiquated bank laws and thus expand powers for banks make it even more apparent that bankers must address the issues that effect the future of their institution. In this era of deregulation and change, the successful community bank will be the one that is prepared for and able to effectively adjust to change.

An effective means of coping with "change" is the development of a **"strategic plan"**. Though it may seem difficult to realize where the time will be found to organize and formalize a "plan", it should be noted that a properly utilized and well thought out plan will improve decision making and make time commitments more easily prioritized and allocated. The banker who doesn't have time for planning is the banker who will seldom have time to act rather than react.

THE STRATEGIC PLAN: A strategic plan sets forth the bank's goals and addresses how to achieve them. To be effective, the plan must project beyond the current fiscal year. Given the rapidly changing banking environment, a one year and three year time frame are considered reasonable. The plan must use the best available data to evaluate economic and market conditions and then determine a realistic set of goals.

Profitability is important. However, it may be counterproductive to maximize short-term profits at the expense of achieving long-term goals. A balance must be found between a comfortable profit margin and the resources needed to meet strategic objectives.

Before writing a strategic plan, the following points must be acknowledged and accepted: you and your staff are qualified to write your plan; a strategic plan is basically defining your goals and objectives into written form; and the first attempt will not be perfect, but will be the basis for building an improved plan.

THE PLANNING PROCESS: A plan should address two distinct criteria: one that identifies **what** the organization is and **what** it desires to be, often referred to as the **"mission statement"**, and one that defines **how** to achieve the mission of the organization, i.e., goals and objectives.

MISSION STATEMENT: The **mission statement** identifies the organization and should include an identification of products offered and markets served as well as a description of the primary factor for determining why you do what you do.

The mission statement can be reduced to a few concise statements addressing basic issues such as: What business are we in? What business should we be in? Who are our customers? Who should our customers be? and, How do we want our customers to know us or view us?

OBJECTIVES: After having determined what the mission is, strategy must be developed giving guidances as to **how** the mission will be achieved. The objectives defined in the "how to achieve" strategy should never conflict with the bank's stated mission, but should be in harmony with the mission statement. When necessary, an outline of programs needed to accomplish the objectives should be included. Objectives reflect what it is that is to be accomplished and should be measurable; realistic; understandable; and they must have a defined time frame.

If nothing more is accomplished than defining the **"mission statement"** and outlining the highest priority objectives for the upcoming year, including the financial expectations, the probability of accomplishing those objectives will be dramatically increased. While such an exercise is not the ultimate goal, it should suffice as a temporary plan.

COMMUNICATION AND INVOLVEMENT: It is strongly suggested that the strategic plan be in written form and reviewed by the board of directors. Further, in order for the planning process to achieve maximum effectiveness, it is imperative that the entire plan be presented to all bank personnel. **Communication is vital to the success of the plan**. Top management must communicate to all employees that it is committed to its long-range plans and that every manager is expected to use it.

Following a presentation of the plan, it is appropriate to conduct meetings between each level of supervision and their subordinates. The primary purpose of such meetings is to respond to subordinates questions and concerns, solicit their ideas and establish their commitment to support the strategic plan.

The **secondary purpose** is to encourage a sense of employee participation. This idea is based on two management concepts: **1)** good ideas for improvement often exist in the minds of people who actually perform the work and **2)** people will more readily commit to accomplishing objectives that they have had a personal role in establishing.

REVIEW AND MONITORING: Managers at the highest level will need to consult the plan periodically and even reexamine the plan itself from time to time. To help achieve the goals established, progress must be monitored. Management must meet at regular intervals to evaluate how each department is accomplishing its specific tasks.

The plan must be flexible. Goals that are no longer realistic should be changed or eliminated. However, caution is advised against changing the plan too frequently. Once that happens, employees come to believe that management only uses the plan when it is convenient.

EXAMINER EVALUATION: The personnel of the State Bank Department firmly believe that a well-managed bank is one that conscientiously **plans for change** rather than merely **reacts to change**. With this in mind, one objective of the examining process will be to perform a review of management's planning process. The examiner is not to evaluate bank planning based on the preconception that every bank will have a model planning process. In fact, just the opposite will be emphasized - the planning process should be structured to reflect the unique characteristics of the bank in order for the process to be most effective. The examiner's criticism of planned actions will only be appropriate if the action contemplated will seriously harm the bank to a degree that requires regulatory concern or action.

In the event bank management has not developed a formal plan or reduced the plan to writing, the examiner shall obtain from senior management and/or the board of directors information supporting plans for such matters as growth, expansion, capital, dividend payouts, changes and mix of assets, changes in sources of funding, and changes in management and personnel.

The examiner shall review senior management's and the board of directors's commitment to the planning concept. The examiner will detail in the Report of Examination the bank's corporate planning process and determine if the following areas are addressed: adequate involvement of the bank's board; major departments are involved in the planning process; plans are effectively communicated throughout the organization; a monitoring and review process facilitates updates and revisions as warranted; and that future management and personnel needs are addressed and training and advancement policies will keep the organization viable and dynamic.

The examiner will have greater confidence in the management and future viability of the bank when it is determined that management has the ability and has taken the initiative to plan for change and is able to communicate the plan throughout the organization. Such confidence will be communicated to the Bank Commissioner and the bank's board of directors through the Report of Examination.

Strategic planning is not an end, but a means to managing change and focus on emerging opportunities.

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ADMINISTRATIVE POLICY #006
BILL J. FORD, BANK COMMISSIONER **RETAIN FOR**
DECEMBER 10, 1990 **FUTURE**
SUBJECT: ENVIRONMENTAL RISK IN LENDING **REFERENCE**

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Environmental issues and the magnitude of costs associated with remedial action regarding hazardous waste has begun to impact financial institutions. Lending transactions involving real estate as collateral are particularly at risk. Two types of environmental risk exist. In addition to the normal risk of loss of bankable assets that can be attributed to hazardous waste, there exists the potentially enormous liability of rectifying hazards existing in violation of state and federal law that far exceed an asset's value. This includes liability to third parties endangered by hazardous waste. Protection from this monetary liability which can literally eliminate an institution's capital must be the goal of the bank's directorate, management, and legal counsel.

STATUTORY OVERVIEW

State and federal laws enacted to enforce and assess remediation of hazardous waste have been enforced to the detriment of financial institutions. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund, was created to authorize the Environmental Protection Agency to undertake remedial action or to direct others to do so. Under this law, any person or entity determined to be the owner or operator of an entity producing, causing, transporting, or storing hazardous waste can be assessed clean-up costs. This is the most important and severe law from a lender's point of view.

To be liable under CERCLA, a bank must be determined to be the owner or operator of a hazardous entity. Three defenses are recognized by CERCLA - an act of God, an act of war, or an act or omission by a third party commonly known as the **INNOCENT LANDOWNER DEFENSE**. To qualify as an innocent landowner, it must be demonstrated that due care has been exercised with respect to hazardous substances once discovered, and that precautions are taken against foreseeable acts or omissions of others. State law is often subjugated to this federal statute. Liability cannot be determined in Arkansas courts.

PRECAUTIONARY MEASURES

Education of personnel to the extent that identification of existing and potential environmental hazards can be recognized, and that appropriate actions follow, is primary in ensuring the success of all precautionary measures. Several important procedures have been identified. These include environmental assessment; loan agreement provisions; loan documentation, review, and monitoring; foreclosure or workout procedures; and trust asset assessment. Incorporation of

these procedures into current loan underwriting policies will help insulate financial institutions from environmental liability. A loan policy should contain provisions that allow for the identification of potentially risky transactions and include steps to follow through all stages of lending. Also included should be a system of internal checks and balances to provide for complete review, approval, and knowledge within the institution. Protective measures listed above and discussed below must begin at the earliest stage possible. Opening discussions with prospective borrowers whether written or verbal should refer to effects of any current or potential environmental hazards.

ENVIRONMENTAL ASSESSMENT

Assessment of the environmental hazards of a particular transaction is the first step that should be taken and can determine if a loan should ever be approved. The process is very site specific. The most recognized form of evaluation is an environmental audit performed in a phased approach. There is no governing body that regulates the performance of these audits, but industry standards exist. **It is recommended that only qualified professionals be used to conduct such audits.** Various private engineering and environmental service companies employ environmental engineers to perform these audits. The Federal National Mortgage Association Environmental Assessment Guidelines, Federal Home Loan Bank Thrift Bulletin 16, and Federal Home Loan Mortgage Corporation draft guidelines provide more detailed information on this topic and should be consulted to become familiar with this process. The three phases of environmental audits are highlighted briefly below.

PHASE I

- Historical review of the site
- Review of zoning, building, and regulatory codes
- Review of regulatory agency records
- Inspection of the site
- Written summary report

PHASE II

- To be performed if Phase I reveals apparent hazards
- Testing of underground storage tanks
- Soil, soil gas, bulk soil, groundwater, and surfacewater testing and sampling
- Comprehensive inspection, sampling, and analyzing of building materials
- Written summary report

PHASE III

- Contains all aspects of Phase I and II with the addition of much more involved testing and sampling procedures.

ENVIRONMENTAL QUESTIONNAIRE

A less informative type of assessment is an environmental questionnaire. This may be applied to all credit transactions to determine which steps to pursue thereafter, similar to a screening process. While an environmental questionnaire should not replace an environmental audit, it is a valuable tool and can be utilized for smaller credits when audits may be cost prohibitive.

THE LOAN AGREEMENT

A loan agreement cannot eliminate lender liability under CERCLA if the lender is otherwise liable, but it can make another party liable to the lender. The following covenants provide a starting point for protection from environmental liability in written credit instruments.

LOAN COVENANTS

- Require compliance with all laws, rules, regulations, and supervisory authorities, and notification of release of hazardous substances
- Require borrower to covenant that it will remedy any contamination that occurs
- Require borrower to indemnify lender for any losses or expenses incurred as a result of environmental problems
- Require indemnification or guaranty from a solvent parent company or individual
- Make lender beneficiary of environmental assessments by requiring audits to be addressed to borrower and lender, require access to all relevant documents
- Have borrower establish bond or trust to guarantee remediation of contamination
- Require borrower to obtain environmental impairment liability insurance if available and cost effective
- Insert due on sale clause

- Insert default or acceleration clause subject to use, storage, or disposal of hazardous materials on site
- Require default or acceleration if other breach of contract occurs
- Require additional security in event of contamination
- Require notification of violation of environmental laws
- Require borrower to allow lender access to records regarding environmental compliance and regulatory agencies

DOCUMENTATION, REVIEW, AND MONITORING

In addition to the normal documentation there are numerous items to which banks must devote special attention. These items remain almost entirely within an institution's power to control, and this power should be exercised to the institution's benefit.

- Review prior ownership and use of property
- Monitor manufacturing and operational process
- Monitor resource use and disposal
- Review litigation history
- Maintain current insurance coverage - property, liability, and environmental liability
- Maintain necessary current licenses, permits and inspections - local, state, and federal
- Monitor regulatory compliance for violations - historical and present
- Perform periodic inspection of site and underground storage tanks

FORECLOSURE OR WORKOUT SITUATIONS

As a loan enters a situation where foreclosure action is contemplated or a workout situation is apparent, special caution must be exercised regarding environmental risk. It is prudent to follow the same precautionary procedures used when a credit is originated. Prior to foreclosure, a new environmental audit should be performed to determine if there is sufficient risk of liability to a title holder that would negate any funds realized through foreclosure. Additionally, extreme care should be taken not to exert undue influence in the operation of an entity in a workout situation. A lender can be liable under CERCLA as an operator of an entity. Litigation, although case specific, does indicate that most lenders are not determined operators if their influence is limited to the financial aspects of the entity. However, the recent decision in United States v. Fleet Factors Corporation, 901 F.2d 1550 (11th Cir. 1990) is indicative of the dynamic nature of environmental liability litigation. This decision states that a secured creditor may be determined liable under CERCLA without being an operator if its influence in the financial management of the entity is of a degree that can enable it to impact hazardous waste management or environmental matters if it so chooses. Although not clearly defined by legal precedent, sufficient care must also be exercised and legal counsel consulted to preclude the conclusion that a creditor can control hazardous waste management through loan covenants or written agreements.

ENVIRONMENTAL RISK OF TRUST DEPARTMENT ASSETS

Legislation has been introduced in Congress designed to limit the liability of a fiduciary for hazardous waste contamination of property for which it holds legal title as part of an estate or trust. **Trust department assets at this stage of legislative action are essentially subject to the same environmental risk as those of the loan portfolio**. Prior to the acceptance of any real property into trust, steps similar to those delineated above should be initiated. They should include but not be limited to environmental assessments or audits where appropriate. The most important aspect as in any transaction affected by environmental hazards is proof of exercising due diligence. Special attention and caution must be exercised regarding decedent estates and dispersion or expenditure of funds relating to preemptive action or remediation of environmental hazards. Education of trust department personnel is paramount.

EXAMINATION CONSIDERATIONS

Examiners, when evaluating the risk inherent in the loan portfolio, will include an assessment of environmental risk. This assessment will primarily be measured against the implementation and enforcement of this policy. Foremost in the examination process is the determination that the financial institution has utilized this policy in exercising all prudent avenues available to protect their interests against the risk of environmental liability. The presence of environmental risk or noncompliance with this policy will adversely affect the determination of the soundness and viability of an institution.

REFERENCE OF APPLICABLE LAWS

There is no well defined procedure that lenders can follow that will guarantee protection from liability for environmental hazards. Nothing can entirely eliminate the risk of liability. Partially responsible for this situation is the nebulous framework of existing state and federal statutes characterized by the volatility of environmental issues and proposed legislation. Lenders may wish to consult the Environmental Protection Agency and request their Draft Rule on Lender Liability under CERCLA which should be finalized in the future. This guidance is informative and contains suggestions similar to those found within this policy. Listed in part below are state and federal laws that impact this policy. It must be recognized that while this policy is designed to protect lenders from environmental liability, noncompliance with the numerous related state and federal statutes can compromise a secured creditor's position in other ways such as monetary penalties and weakened collateral margins.

FEDERAL STATUTES

- Resource Conservation and Recovery Act (RCRA)
- Hazardous and Solid Waste Amendments (HSWA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), "Superfund Act"
- Superfund Amendments and Reauthorization Act (SARA)
- Clean Water Act
- Clean Air Act
- Toxic Substances Control Act**FEDERAL AGENCIES**
- Environmental Protection Agency (EPA)
  Enforcement and administration of federal statutes
- Department of Justice

Justice Department Land and Natural Resource Division litigates RSRA and CERCLA claims for the EPA.

STATE STATUTES

- Arkansas Hazardous Waste Management Act
- Arkansas Remedial Action Trust Fund Act (RATFA)
- Arkansas Emergency Response Fund Act (ERFA)
- Arkansas Water and Air Pollution Control Act
- Recent legislation:
- Act 172 of 1989, Codified at Secs. 8-7-801-812, A.C.A. Of 1987 (1989 Supp) Regulates underground storage tanks
- Act 173 of 1989, Codified at Secs. 8-7-901-908, A.C.A of 1987 (1989 Supp.) Cost and damage recovery for storage tank hazards: **Compliance with underground storage tank regulations can substantially reduce potential liability and provide availability of fund for remediation.**
- Act 260 of 1989, Codified at Secs. 18-49-103, 8-6-205, 8-7-409, 8-7-508, 8-7-403, and 8-7-307, Arkansas Code of 1987 Annotated (1989 Supp.) Innocent landowner's remedies and defenses

STATE AGENCIES

- Arkansas Department of Pollution Control and Ecology Enforcement and administration of state statutes

SUMMARY AND CONCLUSION

There is a general proclivity to address solutions after problems occur in the financial world. This policy is designed to combat that situation by requiring preventive measures. Pollution and hazardous waste problems are having an increasingly large monetary impact on financial institutions. Governments in some instances have the right to assign liability to persons or entities no longer holding title to contaminated property. A lender seeking to enforce a mortgage by foreclosure may be exposed to a risk of liability as the owner or operator of a hazardous waste site that far exceeds the property value or revenue generated by the site. These facts have caused traditional loan underwriting procedures to be inadequate. This policy will aid financial institutions in establishing precautionary procedures that will help them evaluate not only the normal business risk associated with hazardous waste, but the threatening liability that may arise.

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ADMINISTRATIVE POLICY #007 - *REVISED*

BILL J. FORD, BANK COMMISSIONER **RETAIN FOR**
DATE: JANUARY 31, 1995 **FUTURE**
SUBJECT: CONTINGENCY PLANNING **REFERENCE**
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The community bank plays a vital role in rebuilding a community in the event of a catastrophic disaster as well as a localized disaster. In order for the community bank to respond quickly and efficiently to the needs of the community and its own needs, the bank must be prepared to implement a comprehensive and effective contingency plan.

A. General Concept

The contingency plan should set forth the bank's plan of action in dealing with various emergency situations. To be effective, the plan should contain as much detail as possible and incorporate each of the bank's departments. The purpose of contingency planning is to minimize disruptions of service, minimize financial loss, and ensure timely resumption of operations.

Contingency planning is an ongoing process. After the plan is written, it should be approved by the Board of Directors and reviewed annually. In order for the plan to be successfully implemented, it must be presented and discussed with all bank personnel. Employees should be appropriately trained to handle certain emergency situations. The areas addressed in this policy apply to in-house systems, remote job entry sites and data processing servicers. Banks and data processing servicers which have not adopted a contingency plan will be cited for contravention of this policy.

B. Contingency procedures.

Written contingency procedures should, at a minimum address:

1. Conditions or situations that necessitate implementing the plan and using the backup site.
2. Responsibility for making a decision and guidelines as to when it should be made.
3. Notification of employees.
4. Backup site notification.
5. Procedures to be followed at the backup site.
6. Files, input work, special forms, etc., to be taken to the backup site and means of transportation.
7. Facility shutdown.
8. Executive succession.
9. Hardware/Software backup.
10. Data files/off-site storage.
11. Training.
12. Telecommunications backup.
13. Evacuation and shelter.
14. Emergency services and information.
15. Microcomputer processing.
16. Priority of applications to be processed.

C. Contingency plan testing and review.

The contingency plan should be tested at least every twelve months. For example, if the last test date was March 31, 1994, the bank must test the plan on or before March 31, 1995. If the contingency plan is not tested within the required time frame, the bank will be cited for contravention of this policy. It is also recommended the plan be tested whenever there are major changes in personnel, policies and procedures or hardware and software products.

Backup files should be used when testing is performed at the backup site. After testing, a summary report of the test should be presented to the Board of Directors for review.

D. Out-of-State Servicers.

If a bank has an out-of-state servicer that performs EDP contingency processing, a representative from the bank should be present at the servicers institution. The bank's representative should ensure that:

1. The bank's data is processed in a timely manner.

2. Communication between the backup site and the bank is established and maintained.

3. Assist servicer in the processing of software applications.

Further guidance for contingency planning and procedures can be found in the Information Systems Handbook prepared by the Federal Financial Institutions Examination Council (FFIEC). Additional materials regarding contingency/disaster recovery planning may be obtained from trade associations, accounting firms, and the disaster recovery industry.

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ADMINISTRATIVE POLICY #008

FRANK WHITE, BANK COMMISSIONER **RETAIN FOR**
SEPTEMBER 30, 2002 **FUTURE**
SUBJECT: BANK BOARD OF DIRECTORS **REFERENCE**

* *

Business Policies of state banks are formulated by the bank's Board of Directors. These Boards should be composed of persons knowledgeable about economic conditions of their community and their region, competent business persons, and skilled in financial management. The Board of Directors must be attentive to their duties, familiar with banking laws and regulations, and aware of their fiduciary responsibilities. The bank's Board of Directors has the ultimate responsibility and fiduciary liability to ensure the safe and sound operation of their financial institution for the benefit of the shareholders and general public.

In order to assist Directors in their industry education and awareness of responsibilities, all members of a state bank's Board of Directors must attend Director training approved by the Bank Commissioner. Directors first elected to the Board on or after October 15, 2002, must attend one training seminar within the first year of service. Directors first elected prior to October 15, 2002, must attend one training seminar prior to October 15, 2004.

Evidence of Director attendance at a training seminar must be maintained in the Board Minutes of the bank.

SECTION R15

COUNTY OR REGIONAL
INDUSTRIAL DEVELOPMENT CORPORATIONS

Purposes of Each Industrial Development Corporation: The purpose of each industrial development corporation organized pursuant to A.C.A. § 15-4-1201 et seq. is to promote, stimulate, develop, and advance the business of and economic welfare of the county or region included in its organization. The Bank Commissioner and the State Banking Board therefore rule that in order to implement the intentions of the act, companies should make every effort to use the assets raised by the corporation to pursue the intentions set out in the act. The Bank Commissioner and the State Banking board recognize that some projects will require a certain period of time to raise capital in order to fund a particular project or to identify a deserving project to fund. However, the Bank Commissioner and the State Banking Board will consider the failure of an industrial development corporation to seriously investigate worthwhile projects or make investments in economic development projects for an unreasonable period of time to be a violation of the intentions of the act.

An industrial development corporation shall not sell shares or units and fail to utilize the proceeds thereof in accordance with the purposes set forth in A.C.A. § 15-4-1214(a). Except as provided below, in the event that such proceeds are not invested, loaned or otherwise utilized in accordance with such purposes within eighteen (18) months from the date on which such funds are received, the industrial development corporation shall immediately cancel all such shares or units and refund to the purchasers of such shares or units all proceeds, plus interest or income derived thereon, on a pro rata basis, as well as all commissions or remuneration paid to any person on account of the sale thereof. Such refund, with the exception of the interest or profit derived thereon, shall not be considered to be a dividend or distribution within the meaning of A.C.A. § 15-4-1215, and shall be treated as set forth in A.C.A. § 15-4-1224 (a)(2)(A). Provided however, that upon written application and for good cause shown, the Bank Commissioner may in his discretion extend such period for two additional six (6) month periods, not to exceed a total of thirty (30) months from the date on which the proceeds from the sale of the stock or units were received by the industrial development corporation. Each extension shall require a separate application filed by the industrial development corporation with the Bank Commissioner at least ten (10) days prior to the expiration of the period sought to be extended. Proceeds, unless otherwise clearly accounted for by the industrial development corporation, shall be accounted for on a first in, first out basis.

I. **INFORMATION**. The Arkansas State Banking Board, in order to meet the statutory obligation to examine and supervise/regulate county or regional industrial development corporations organized pursuant to A.C.A. § 15-4-1201, et seq., require such organizations to submit the following information to the Arkansas State Bank Department:

A. Quarterly financial reports containing financial information requested by the Arkansas State Bank Department. Each quarterly financial report must be filed with the Department no later than forty-five days following the calendar quarter ending on March

31, June 30, September 30, and December 31 of each year. Any county or regional industrial development corporation that fails or refuses to file a financial report with the Department within the time limitations set forth by this regulation may be assessed a monetary penalty against the county or regional industrial development corporation in the amount of one hundred dollars ($100) per day for the first thirty (30) days of violation and five hundred dollars ($500) per day of violation for every day thereafter;

B. An annual independent audit of the corporation, which has been performed by a qualified accounting firm. This audit is required to be submitted to the Arkansas State Bank Department no later than April 15 of each year. Any county or regional industrial development corporation that fails or refuses to file an annual independent audit with the Department by or before April 15 of each year may be assessed a monetary penalty against the county or regional industrial development corporation in the amount of one hundred dollars ($100) per day for the first thirty (30) days of violation and five hundred dollars ($500) per day of violation for every day thereafter;

C. The Bank Commissioner may extend the time for filing a quarterly or annual report upon the request in writing by a county or regional industrial development corporation. The request must provide a good cause for such extension and must have prior approval of the Bank Commissioner.

D. An annual list of shareholders, which must be submitted to the Arkansas State Bank Department within thirty days from December 31 each year; and

E. Any changes or amendments made in the company's Articles of Incorporation.

II. **IMPAIRED ASSETS OR CAPITAL.** Arkansas Code § 15-4-1202(5) defines "impaired" capital or assets as when the capital of the company has been reduced to fifty thousand dollars ($50,000) or less.

III. **ASSESSMENT FEES**. The State Banking Board and the Bank Commissioner require that assessment fees payable on a semi-annual basis to the State Bank Department be remitted by automated processing as established by the Bank Commissioner. Exceptions for payment of assessment fees by any other method than the automated method established by the Department must be upon prior request and approval by the Bank Commissioner. Exception requests will only be approved on an extraordinary basis.

SECTION TR1
TRUST INSTITUTIONS

FEES AND ASSESSMENTS SCHEDULE

1.1 - Fees.

a) Application for new Trust Company $8,000
b) Official protest of application 2,000
c) Private Trust Company application 4,000
d) Private Trust Company Annual Certificate.....200
e) Acquisition of Control of Trust Company 1,500
f) Charter Amendments 200
g) Application for merger.....2,500
h) Registration of corporate name.....25
i) Additional trust office 300
j) Out-of-state office.....300
k) Registration of out-of-state Trust Company 300

1.2 - Assessments, Examination Fees.

Assessment fees to defray the costs of examinations and the costs of operations of the State Bank Department will be charged in January and July of each year.

The assessment schedule is as follows:

A base assessment fee of $1,250 will be billed by the State Bank Department to each state-chartered trust company on a semi-annual basis in January and July of each year. In addition, an assessment of $360 per examiner per day or partial day of examination times the number of examination days will be billed in January or July immediately following the examination in order to defray the costs of examination to the department. These assessments will be payable within ten (10) days after notice from the Commissioner in January and July of each year.

1.3 - Confidential Information.

In addition to information maintained as confidential in accordance with Section 87 of Act 940 of 1997, the following information submitted in support of an application for trust charter, office, or representative office shall be maintained as confidential:

a) Any financial statement of a proposed officer, director, or principal shareholder;
b) Names of any proposed officer requesting to remain confidential due to current employment status.

1.4 - Bonding Requirements - State Chartered Trust Company.

The board of a state trust company shall require protection and indemnity against dishonesty, fraud, defalcating, forgery, theft, and other similar insurable losses on each director, officer, and employee of the company in an amount not less than $1,000,000 or such greater amount which is determined to be reasonable in accordance with the Board of Directors resolution based upon the asset size of the trust company.

1.5 Transfer of Stock – State Chartered Trust Company

(a) The stock of every state trust company shall be transferable only on the books of the trust company.
(b) When any number of shares of the stock of a state trust company shall be transferred to any transferee or joint transferees, the state trust company shall promptly transmit to the Commissioner a certificate, on a form prescribed by the Commissioner, showing such transfer. The certificate also shall show the total number of shares at that time outstanding in the name of the transferee or anyone known by the state trust company to be the nominee of the transferee or holding in trust for the transferee.

Stricken language would be deleted from present law. Underlined language would be added to present law.

State of Arkansas
81st General Assembly

A Bill

ACT 940 OF 1997
Regular Session, 1997
SENATE BILL 691

By: Senators Harriman, Beebe, Wilson, and Bell
By: Representatives Wilkinson, Newman, Miller, Purdom, and Cunningham

For An Act To Be Entitled

"THE ARKANSAS TRUST INSTITUTIONS ACT."

Subtitle

"THE ARKANSAS TRUST INSTITUTIONS ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title.
This Act may be cited as the "Arkansas Trust Institutions Act".

SECTION 2. Certain Definitions.

For the purposes of this Act:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to

it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

(b) administer in any other fiduciary capacity real or tangible personal property; or

(c) act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property.

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(5) "Authorized trust institutions" means any state trust company, subsidiary trust company, or trust office of a trust institution located in Arkansas.

(6) "Bank" means a state bank, national bank, any bank chartered by any state of the United States or any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(7) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision and any successor to these agencies.

(8) "Branch" with respect to a depository institution has the meaning set forth in Arkansas Code § 23-48-702.

(9) "Capital" means:

(a) the sum of:

(i) the par value of all shares of the state trust company having a par value that have been issued;

(ii) the consideration fixed by the board in the manner provided by the Arkansas Business Corporation Act (A.C.A. § 4-27-101 et seq.) for all shares of the state trust company without par value that have been issued, except a part of that consideration that:

(A) has been actually received;

(B) is less than all of that consideration; and

(C) the board, by resolution adopted not later than sixty (60) days after the date of issuance of those shares, has allocated to surplus with the prior approval of the Commissioner; and

(iii) an amount not included in subparagraphs (i) and (ii) that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(b) all amounts otherwise included in paragraphs (a)(i) and (ii) of this subdivision that are attributable to the issuance of securities by the state trust company and that the Commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities.

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the Commissioner may by regulation prescribe.

(11) "Charter" means a charter, license or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(12) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent beneficiaries of an account.

(13) "Commissioner" means the Arkansas Bank Commissioner then in office and, where appropriate, all of his or her successors and predecessors in office.

(14) "Company" includes a bank, trust company, subsidiary trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(15) "Control" means:

(a) the ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;

(b) the ability to control the election of a majority of the board of a state trust company or other company;

(c) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the Commissioner after notice and an opportunity for hearing.

(16) "Department" means the Arkansas State Bank Department.

(17) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. § 1813(c)(2) & (3).

(18) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company.

(19) "Equity security" means:

(a) stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(b) a certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(c) a security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision;

(d) a security carrying a warrant or right to subscribe to or purchase a security described by this subdivision; and

(e) a certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision that evidences an existing or contingent equity ownership interest.

(20) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(21) "Hazardous condition" with respect to a trust company means:

(a) a refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the Commissioner;

(b) violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the Commissioner; or

(c) a circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) has equity capital less than the amount of capital the trust company is required to maintain under Section 10, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) violates or refuses to comply with this Act, another statute or regulation applicable to trust companies, or any final and enforceable order of the Commissioner;

(v) is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with,

(A) inexperienced or inattentive management;

(B) potentially dangerous operating practices;

(C) infrequent or inadequate audits;

(D) administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

(E) failure to adhere to sound administrative practices;

(F) frequent occurrences of violations of laws, regulations or terms of the governing instruments; or,

(G) engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest.

(22) "Insider" means:

(a) each director, officer or principal shareholder of the trust company;

(b) any company controlled by a person described by paragraph (a) of this subdivision; or

(c) any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation.

(23) "Insolvent" means a circumstance or condition in which a state trust company:

(a) is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(b) has equity capital less than $1,000,000.00, as determined under regulatory accounting principles;

(c) fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the Commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with Section 30 of this Act.

(d) sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by Sections 50 - 55 of this Act; or

(e) attempts to dissolve or liquidate other than as provided by Sections 56 - 61 of this Act.

(24) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit.

(25) "License" means the authority granted by the Commissioner pursuant to this Act to establish, acquire or maintain a trust office.

(26) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(27) "New trust office" means a trust office located in a host state which (i) is originally established by the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result of (A) the acquisition of another trust institution or trust office of another trust institution or (B) a merger, consolidation, or conversion involving any such trust institution or trust office.

(28) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(29) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(30) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company.

(31) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state.

(32) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(33) "Out-of-state trust institution" means a trust institution that is not a state trust institution.

(34) "Person" means an individual, a company or any other legal entity.

(35) "Principal office" with respect to:

(a) a state trust company, means a location registered with the Commissioner as the state trust company's home office at which:

(i) the state trust company does business;

(ii) the state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) at least one executive officer of the state trust company maintains an office; or

(b) a trust institution other than a state trust company, means its principal place of business in the United States.

(36) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a state trust company or other company.

(37) "Private trust company" means a trust company that does not engage in a trust business with the general public.

(38) "Receiver" means the Commissioner, an agent of the Commissioner or any federal or other governmental agency exercising the powers and duties of a receiver pursuant to Section 64 of this Act.

(39) "Savings association" means a depository institution that is neither a bank nor a foreign bank.

(40) "Shareholder" means an owner of a share in a state trust company.

(41) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(42) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(43) "State bank" means a bank chartered to act as a fiduciary by this state.

(44) "State trust company" means a corporation organized or reorganized under this Act.

(45) "State trust institution" means a trust institution having its principal office in this state.

(46) "Subsidiary" means a company that is controlled by another person. The term includes a subsidiary of a subsidiary.

(47) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101, et seq. and authorized by the Commissioner pursuant to subchapter 8 of Chapter 47 of Title 23 of the Arkansas Code Annotated or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989 to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns,

directly or indirectly, an affiliated bank, as that term is defined in subchapter 8 of Chapter 47 of Title 23.

(48) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits.

(49) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

(a) acting as a fiduciary, or

(b) to the extent not acting as a fiduciary, any of the following:

(i) receiving for safekeeping personal property of every description;

(ii) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or (iii) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(50) "Trust company" means a state trust company, subsidiary trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(51) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(52) "Trust institution" means a depository institution, state bank or trust company.

(53) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the Commissioner to act as a fiduciary.

(54) "Unauthorized trust activity" means (a) a company, other than one identified in Section 65(a), acting as a fiduciary within this state, (b) a company engaging in a trust business in this state at any office of such company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such company, or (c) an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the Commissioner pursuant to Section 82 is in effect.

(55) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger.

(56) "Voting security" means a share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right

is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

These definitions shall be liberally construed to accomplish the purposes of the Act. The Commissioner by regulation may adopt other definitions to accomplish the purposes of this Act.

SECTION 3. Regulations

The Commissioner may promulgate such regulations as he or she determines to be necessary or appropriate in order to implement the provisions of this Act.

SECTION 4. Organization and Powers of State Trust Company.

(a) Subject to the other provisions of this act, one or more persons may organize and charter a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(b) Subject to Section 11 of this Act, a state trust company may exercise the powers of an Arkansas business corporation reasonably necessary or helpful to enable exercise of its specific powers under this Act.

(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.

(d) Subject to Section 30 of this Act, a state trust company may deposit trust funds with itself or an affiliate.

(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation (FDIC), a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.

SECTION 5. Articles of Association of State Trust Company.

The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:

(a) the name of the state trust company;

(b) the period of its duration, which may be perpetual;

(c) the powers of the state trust company, which may be stated as:

(1) all powers granted to a state trust company in this state; or

(2) a list of the specific powers that the state trust company chooses and is authorized to exercise;

(d) the aggregate number of shares that the state trust company will be authorized to issue, the number of classes of shares, which may be one or more, the number of shares of

each class if more than one class, and a statement of the par value of the shares of each class or that the shares are to be without par value;

(e) if the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class;

(f) any provision granting to shareholders the preemptive right to acquire additional shares of the state trust company;

(g) any provision granting the right of shareholders to cumulative voting in the election of directors;

(h) the aggregate amount of consideration to be received for all shares initially issued by the state trust company, and a statement signed and verified by the organizers that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the Commissioner;

(i) any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this Act to be set forth in the articles of association;

(j) the street address of the state trust company's principal office required to be maintained under Section 72 of this Act; and

(k) the number of directors or managers constituting the initial board, which may not be fewer than three (3), and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified.

SECTION 6. Application for State Trust Company Charter.

(a) An application for a state trust company charter must be made under oath and in the form required by the Commissioner and must be supported by information, data, records, and opinions of counsel that the Commissioner requires. The application must be accompanied by anon-refundable filing fe of not less than three thousand dollars ($3,000.00) nor more than ten thousand dollars ($10,000.00) as set by regulation of the Commissioner and proof of escrow of deposit for the required capital.

(b) The Commissioner shall grant a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the Commissioner shall (i) examine the business plan which shall be submitted as part of the application for a state trust company charter and (ii) consider:

(1) the market or markets to be served;

(2) whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(3) whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) whether the proposed officers and directors, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(5) whether each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) whether the organizers are acting in good faith.

(c) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

SECTION 7. Notice and Investigation of Charter Application.

(a) The Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Upon filing of an application with the Commissioner, the organizers of the proposed state trust company shall give notice of filing through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation and shall give written notice of filing through the United States mail to all trust institutions maintaining a principal office or a trust office in the county wherein the principal office of the proposed state trust company is to be located.

(b) At the expense of the organizers, the Commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. The Commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by A.C.A. § 25-19-101 et seq. Regulations adopted under this Act may specify the confidential or nonconfidential character of information obtained by the Department under this section. Except as provided in regulations regarding confidential information, the financial statement of a proposed officer, director or principal shareholder is confidential and not subject to public disclosure.

SECTION 8. Hearing and Decision on Charter Application.

(a) No person shall appear in opposition to the application unless such person shall have filed a written protest to the granting of the application within thirty (30) days of the date of the notice of the filing of the application. Such protest must state the grounds for objection and must be accompanied by a filing fee of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for each protestant, such amount to be set by regulation promulgated by the Commissioner.

(b) Once the written report of investigation has been completed, the Commissioner shall establish a time for hearing on the charter application.

(c) Notice of the time, place, and purpose of the hearing shall be given at least thirty (30) before the hearing as follows:

(1) By letter from the Commissioner to the organizers of the proposed state trust company and to each trust institution to which the organizers of the application are required to give written notice pursuant to Section 7(a); and

(2) By letter from the Commissioner to each person who has notified the Commissioner of an intention to oppose the application, provided that if a group of persons has protested the application, the notice may be given to one (1) member of the group; and

(3) By release to news media.

(d) If the Commissioner sets a hearing, the Commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the Commissioner considers advisable and consistent with applicable law and regulations.

(e) Based on the record of any hearing conducted pursuant to paragraph (d) above, the Commissioner shall determine whether all of the necessary conditions set forth in Section 6(b) of this Act have been established and shall enter an order granting or denying the charter. The Commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

SECTION 9. Issuance of Charter.

(a) A state trust company may not engage in the trust business until it receives its charter from the Commissioner. The Commissioner may not deliver the charter until the state trust company has:

(1) elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the Commissioner; and

(2) complied with all other requirements of this Act relative to the organization of a state trust company.

(b) If a state trust company does not open and engage in the trust business within six (6) months after the date it receives its charter or conditional approval of application for charter, or

within such further period as such period may be extended, the Commissioner shall revoke the charter or cancel the conditional approval of application for charter without judicial action.

SECTION 10. Required Capital.

(a) The Commissioner may not issue a charter to a state trust company having required capital of less than one million dollars ($1,000,000.00), except as provided in subsection (b) of this section.

(b) The Commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the Commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company. The safety and soundness factors to be considered by the Commissioner in the exercise of such discretion include but are not limited to,

(1) the nature and type of business conducted;

(2) the nature and degree of liquidity in assets held in a corporate capacity;

(3) the amount of fiduciary assets under management;

(4) the type of fiduciary assets held and the depository of such assets;

(5) the complexity of fiduciary duties and degree of discretion undertaken;

(6) the competence and experience of management;

(7) the extent and adequacy of internal controls;

(8) the presence or absence of annual unqualified audits by an independent certified public accountant;

(9) the reasonableness of business plans for retaining or acquiring additional capital; and

(10) the existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries and grantors.

(c) The proposed effective date of an order requiring an existing state trust company to increase its capital must be stated in the order as no sooner than twenty (20) days after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the Commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section and section 18 of this Act, a state trust company to which the Commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the Commissioner directs under subsection (b) of this section.

SECTION 11. Application of Laws Relating to General Business Corporations.

(a) The Arkansas Business Corporation Act of 1987 applies to a trust company to the extent not inconsistent with this Act or the proper business of a trust company, except that any reference to the secretary of state means the Commissioner unless the context requires otherwise.

(b) Unless expressly authorized by this Act or a regulation of the Commissioner, a trust company may not take an action authorized by the Arkansas Business Corporation Act regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Arkansas Business Corporation Act would require a filing with the secretary of state if the trust company were a business corporation, without first submitting the filing to the Commissioner for the same purposes for which it otherwise would be required to be submitted to the secretary of state and compliance with the applicable provisions of this Act.

(c) The Commissioner may adopt regulations to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Arkansas Business Corporation Act applicable to an action taken under this act.

SECTION 12. Commissioner Hearings; Appeals.

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law. A hearing before the Commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the Commissioner. A matter made confidential by law must be considered by the Commissioner in a closed hearing.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under this Act.

(c) No person shall appear in opposition to the application unless such person shall have filed a written protest pursuant to Section 8 and paid the applicable fee.

(d) At the hearing all organizers of the proposed state trust company and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.

(e) The Commissioner may subpoena witnesses on his own motion or on the request of any party to the proceedings.

(f) The admission of evidence at such hearing shall be controlled by A.C.A. § 25-15-213. The parties shall have the right to cross-examine witnesses. Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Commissioner's specialized knowledge. The parties may bind themselves by stipulation.

(g) The organizers shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the organizers to furnish at least one (1) copy of the transcript to the Commissioner free of charge.

(h) The Commissioner shall render his decision in writing, at or after a hearing, which decision shall include the Commissioner's findings of fact and conclusions of law.

(i)(1) The time for filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the date the final decision of the Commissioner is mailed or delivered, in written form, to the parties desiring to appeal.

(2) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

SECTION 13. Trust Companies Chartered Under Prior Law.

The charter of a corporation which was previously a trust company incorporated under any laws of this state prior to the adoption of the Arkansas Banking Code of 1997 may be converted to a state trust company under this Act, if the charter, or evidence satisfactory to the Commissioner that such corporation is still in existence and in good standing, is presented to the Department within six (6) months of enactment of this Act for substitution of a charter issued under this Act.

SECTION 14. Amendment of State Trust Company Articles of Association.

(a) A state trust company that has been granted a charter under Section 9 of this Act or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares in series must contain:

(1) the designation of each series and of any variations in the preferences, imitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) a statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders must be made or obtained in accordance with provisions of the Arkansas Business Corporation Act for the amendment or restatement of articles of

incorporation except as otherwise provided by this Act or regulations adopted under this Act. The original and one copy of the articles of amendment or restated articles of association must be filed with the Commissioner for approval. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the amendment or restatement within thirty (30) days after the date the Commissioner considers the submission informationally complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.

(d) If the Commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the Commissioner, and any required filing fee has been paid, the Commissioner shall:

(1) endorse the face of the original and copy with the date of approval and the word "Approved";

(2) file the original in the Department's records; and

(3) deliver a certified copy to the amendment or restatement to the state trust company.

(e) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

SECTION 15. Establishing a Series of Shares.

(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series of Shares, the board may do so only on compliance with this section and any regulations adopted under this act.

(b) A series of shares may be established in the manner provided by the provisions of the Arkansas Business Corporation Act as if the state trust company were a domestic corporation, but the shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one copy of the Articles of Amendment required by the Arkansas Business Corporation Act with the Commissioner. Unless the submission presents novel or unusual questions, the Commissioner shall approve or reject the series within thirty (30) days after the date the Commissioner considers the submission informationally complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the Commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the Commissioner, and that any required filing fee has been paid, the Commissioner shall:

(1) endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) file the original in the Department's records; and

(3) deliver a certified copy of the statement to the state trust company.

SECTION 16. Change in Outstanding Capital and Surplus.

(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or otherwise, without the prior approval of the Commissioner, except as permitted by this section or regulations adopted under this act.

(b) Unless otherwise restricted by regulations, prior approval is not required for an increase in capital accomplished through:

(1) issuance of shares of common stock for cash;

(2) declaration and payment of pro rata share dividends as defined in the Arkansas Business Corporation Act; or

(3) adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

SECTION 17. Capital Notes or Debentures.

(a) With the prior written approval of the Commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders, issue and sell its capital notes or debentures, which must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.

(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the Commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the Commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous

condition or insolvency, and for such other purposes as may be provided by regulations adopted under this Act.

SECTION 18. Private Trust Company.

(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this Act applicable to a trust company unless expressly exempted therefrom in writing by the Commissioner pursuant to this section or by regulation adopted by the Commissioner.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of Sections 5(k), 6(b), 7(a) and (b), 10(a), 22, 26(b), (c) and (d), 27 and 28 of this Act. The Commissioner may grant the exemption in whole or in part if the Commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section,

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one or more family members.

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals; and

(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the Commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve the application for exemption or set the application for hearing not later than sixty (60) days after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this Act.

(e) The Commissioner may adopt regulations defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this Act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

SECTION 19. Requirements for a Private Trust Company.

(a) Application.

(1) A private trust company requesting an exemption from the provisions of this Act pursuant to Section 18 shall file an application with the Commissioner containing the following:

(A) a non-refundable application fee on an amount not less than three thousand dollars ($3,000.00) nor more than five thousand dollars ($5,000.00), as set by regulations issued by the Commissioner;

(B) a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) a statement under oath of the reason for requesting the exemption;

(D) a statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the Commissioner;

(E) the current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U.S. Postal Service post office box or a private mail box, postal box, or mail drop; and

(F) listing of the specific provisions of the Act for which the request for exemption is made.

(2) The Commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph (1) of this section.

(b) Requirements.

To maintain status as an exempt private trust company under this Act, the private trust company shall comply with the following:

(A) An exempt private trust company shall not transact business with the public.

(B) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the Commissioner and be accompanied by a fee set by regulations issued by the Commissioner. The annual certification shall be filed on or before June

30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the Department. The Department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the Department of any failure to return an acknowledged copy of any annual certification within the thirty (30) day period. The Commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification.

(C) An exempt private trust company shall comply with the principal office provisions of Section 72 of this Act and with the address and telephone requirements of subsection (a)(1)(E) of this section.

(D) the exempt private trust company shall pay all applicable corporate franchise taxes.

(c) Change of Control. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this Act and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) Authority to Revoke. The Commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) the exempt private trust company makes a false statement under oath on any document required to be filed by the Act or by any regulation promulgated by the Commissioner; or

(2) the exempt private trust company fails to submit to an examination as required by Section 84 of this Act; or

(3) the exempt private trust company withholds requested information from the Commissioner; or

(4) the exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) Notification of Revocation of Exemption. If the Commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the Commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be sooner than five (5) calendar days after the date the notification is mailed or delivered.

The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the Act applicable to non-exempt state trust companies.

(f) Compliance Period. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this Act from which it was formerly exempt. If, however, the Commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the Commissioner may shorten or eliminate, in the Commissioner's sole discretion, the five (5) calendar days compliance period.

(g) Remedies for Failure to Comply. If the private trust company does not comply with all of the provisions of this Act, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the Commissioner may:

(1) institute any action or remedy prescribed by this Act, or any applicable regulation or regulation, or

(2) refer the private trust company to the attorney general for institution of a quo warran to proceeding to revoke the charter.

SECTION 20. Conversion to Public Trust Company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to Section 18 hereof shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence transacting business with the general public thirty (30) days after the date the Commissioner receives the notice, unless the Commissioner specifies another date.

(c) The thirty (30) day period of review may be extended by the Commissioner on determination that the written notice raises issues that require additional information or

additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the Commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this Act from which the notificant had been previously exempted pursuant to Section 18.

SECTION 21. Investment in State Trust Company Facilities.

(a) In this act, "state trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention and storage;

(3) holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) conducting another activity authorized by regulations adopted under this Act.

(b) Without the prior written approval of the Commissioner, a state trust company may not directly or indirectly invest an amount in excess of its capital and surplus in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by regulations adopted under this Act, in computing this limitation a state trust company:

(1) shall include:

(A) its direct investment in state trust company facilities;

(B) any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by subsection (a) of this section;

(C) any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) any indebtedness incurred on state trust company facilities by a company:

(i) that holds title to the facility;

(ii) that is an affiliate of the state trust company; and

(iii) in which the state trust company is invested in the manner described by paragraph (B) or (C) of this subdivision; and

(2) may exclude an amount included under subdivisions (1)(B)-(D) of this subsection to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(c) Real estate acquired under subsection (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the Commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

SECTION 22. Other Real Estate.

(a) A state trust company may not acquire real estate except:

(1) as permitted by Section 21 of this Act or as otherwise provided by this Act, including regulations adopted under this Act;

(2) if necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) with the prior written approval of the Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subsection (a)(1) and (2) of this section not later than:

(1) the fifth anniversary of the date:

(A) it was acquired, except as otherwise provided by regulations adopted under this Act; or

(B) it ceases to be used as a state trust company facility; or

(2) the third anniversary of the date it ceases to be a state trust company facility as provided by Section 21(c) of this Act.

(d) The Commissioner on application may grant one or more extensions of time for disposing of real estate if the Commissioner determines that:

(1) the state trust company has made a good faith effort to dispose of the real estate; or

(2) disposal of the real estate would be detrimental to the state trust company.

SECTION 23. Securities.

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to not less than forty percent (40%) of the state trust company's capital under Section 10 of this Act in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. The Commissioner may authorize investments in excess of this limitation on written application if the Commissioner concludes that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions thereof;

(6) Obligations issued by the State Board of Education under authority of the State Constitution or applicable statutes;

(7) Warrants of political subdivisions of the state of Arkansas and municipalities thereof having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that any such repurchase agreement shall provide for the taking of delivery of such collateral, either directly or through an authorized custodian;

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 CFR § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.

(e) The Commissioner may adopt regulations to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

SECTION 24. Transactions in State Trust Company Shares.

(a) A state trust company may acquire its own shares if:

(1) the amount of its undivided profits is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; and

(2) the state trust company obtains the prior written approval of the Commissioner.

(b) A state trust company shall not make loans upon the security of its own shares.

SECTION 25. Subsidiaries.

(a) Except as otherwise provided by this act or regulations adopted under this act, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b) A state trust company may not invest more than an amount equal to twenty percent (20%) of its capital base in a single subsidiary and may not invest an amount in excess of forty percent (40%) of its capital base in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The Commissioner may authorize investments in excess of these limitations on written application if the Commissioner concludes that:

(1) the excess investment is not prohibited by other applicable law; and

(2) the safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the Commissioner describing in detail the proposed activities of the subsidiary.

(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary thirty (30) days after the date the Commissioner receives the state trust company's letter, unless the Commissioner specifies another date. The Commissioner may extend the thirty (30) day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the Commissioner.

(e) A subsidiary of a state trust company is subject to regulation by the Commissioner to the extent provided by this act or regulations adopted under this act. In the absence of limiting regulations, the Commissioner may regulate a subsidiary as if it were a state trust company.

SECTION 26. Mutual Funds.

(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and the Securities Act of 1933 (15 U.S.C. Sec. 77a et seq.) if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under Section 23(d) of this Act, the state trust company may invest in the investment company without limitation.

(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of Section 23(c) of this Act, the state trust company may invest in the investment company not more than an amount equal to twenty percent (20%) of the state trust company's capital base. This provision does not apply to a money market fund.

(d) In evaluating investment limits under this act of this Act, a state trust company may not be required to combine:

(1) the state trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or

(2) the state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.

SECTION 27. Engaging in Commerce Prohibited.

Except as otherwise provided by this Act or regulations adopted under this Act, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfil a fiduciary obligation to a client.

SECTION 28. Lending Limits.

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a non-insider.

(c) The Commissioner may adopt regulations to administer and carry out this section, including regulations to establish limits, requirements, or exemptions other than those specified

by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The Commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company has been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

SECTION 29. Lease Financing Transactions.

(a) Subject to regulations adopted under this Act, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of Section 28 of this Act.

SECTION 30. Trust Deposit.

(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary provided:

(1) it maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or other entity approved by the Commissioner, either in this state or elsewhere;

(2) the total market value of the security is at all times at least equal to the amount of the deposit;

(3) the separate fund is designated as such; and

(4) the separate fund is maintained under the control of another trust institution, bank or government agency.

(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

SECTION 31. Common Investment Funds.

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The Commissioner may adopt regulations to administer and carry out this section, including but not limited to regulations to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

SECTION 32. Borrowing Limit.

Except with the prior written approval of the Commissioner, a state trust company may not have liabilities outstanding exceeding an amount equal to three times its capital base.

SECTION 33. Pledge of Assets.

A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by Section 30 of this Act, or by regulations adopted under this act. An act, deed, conveyance, pledge, or contract in violation of this section is void.

SECTION 34. Acquisition of Control.

(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the Commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This act does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) the acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the Commissioner before the person votes the securities acquired;

(2) the acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this act or who was identified as a controlling person in a prior application filed with and approved by the Commissioner;

(3) an acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the Commissioner before the person votes the securities acquired;

(4) a transaction exempted by the Commissioner by regulation or order because the transaction is not within the purposes of this act or the regulation of which is not necessary or appropriate to achieve the objectives of this act.

SECTION 35. Application Regarding Acquisition of Control.

(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the Commissioner:

(1) an application in the form prescribed by the Commissioner;

(2) the filing fee in an amount not less than fifteen hundred dollars ($1,500.00) and not more than three thousand dollars ($3,000.00), as set by regulations issued by the Commissioner;

(3) all information required by regulation or that the Commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the Commissioner may be required of each member of the group.

(c) If the proposed transferee is not an Arkansas resident, an Arkansas company, or an out-of-state company qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed acquisition.

(d) The proposed transferee must give public notice of the application, its date of filing, and the identity of each participant, in the form specified by the Commissioner, through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, promptly after the Commissioner accepts the application as complete.

SECTION 36. Hearing and Decision on Acquisition of Control.

(a) Not later than sixty (60) days after the application is officially filed, the Commissioner may approve the application or set the application for hearing. If the Commissioner sets a hearing, the Commissioner shall conduct a hearing as he considers advisable and consistent with governing statutes and regulations.

(b) Based on the record, the Commissioner may issue an order denying an application if:

(1) the acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) the anti-competitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) the proposed acquisition is not in violation of law of this state or the United States;

(2) the financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) the experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) the state trust company will be insolvent, in a hazardous condition, not have adequate capitalization, or not be in compliance with the laws of this state after the acquisition;

(6) the proposed transferee has failed to furnish all information pertinent to the application reasonably required by the Commissioner; or

(7) the proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the Commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the Commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this Act.

SECTION 37. Appeal from Adverse Decision.

(a) If a hearing has been held, the Commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the final order by filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(1) The time for filing such a petition for judicial review shall run from the date the final decision of the Commissioner is mailed or delivered, in written form, to the parties desiring to appeal.

(2) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

(b) The filing of an appeal under this section does not stay the order of the Commissioner.

SECTION 38. Objection to Other Transfer.

This act may not be construed to prevent the Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this act, if the Commissioner considers the transfer to be against the public interest.

SECTION 39. Civil Enforcement; Criminal Penalties.

(a) The Commissioner may bring any appropriate civil action against any person who the Commissioner believes has committed or is about to commit a violation of this act or a regulation or order of the Commissioner pertaining to this act.

(b) A person who knowingly fails or refuses to file the application required by Section 35 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

SECTION 40. Voting Securities Held by State Trust Company.

(a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless :

(1) under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) the terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(3) the securities are voted solely by a co-fiduciary that is not an affiliate of the state trust company, as if the co-fiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

SECTION 41. Bylaws.

Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Arkansas Business Corporation Act.

SECTION 42. Board of Directors.

(a) The board of a state trust company shall be governed by the provisions of The Arkansas Business Corporation Act, provided that the Board must consist of not fewer than three directors, the majority of whom must be residents of this state.

(b) Unless the Commissioner consents otherwise in writing, a person may not serve as director of a state trust company if:

(1) the state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) the person has been convicted of a felony; or,

(3) the person has violated a provision of this Act, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company does not elect directors prior to sixty (60) days after the date of its regular annual meeting, the Commissioner may commence a proceeding to appoint a receiver pursuant to Section 64 of this Act to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the Commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors to fewer than three must be filed not later than ninety (90) days after the date the vacancy occurs. If the vacancy has not been filled upon the expiration of ninety (90) days following the date the vacancy occurs, the Commissioner may commence a proceeding to appoint a receiver pursuant to Section 64 of this Act to operate the state trust company and elect a board of not fewer than three persons to resolve the vacancy. If the conservator is unable to locate or elect three persons willing and able to serve as directors, the Commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director of a state trust company, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) accepts the position and is not disqualified from serving in the position;

(2) will not violate or knowingly permit an officer, director, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(3) will diligently perform the duties of the position.

(f) An advisory director is not considered a director if the advisory director:

(1) is not elected by the shareholders of the state trust company;

(2) does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) provides solely general policy advice to the board.

SECTION 43. Officers.

The board shall annually elect the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. The board may appoint other officers of the state trust company as the board considers necessary. The duties of any two or more officers may be combined by the Board and held by one person.

SECTION 44. Certain Criminal Offenses.

(a) An officer, director, employee or shareholder of a state trust company commits an offense if the person knowingly:

(1) conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the Commissioner or an agent of the Commissioner; or

(2) for the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(c) An offense under this section is a Class D felony.

SECTION 45. Transactions with Management and Affiliates.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of the a majority of the disinterested directors and the Commissioner, a state trust company may not directly or indirectly;

(1) sell or lease an asset of the state trust company to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company; or

(2) purchase or lease an asset in which an officer, director or principal shareholder of the state trust company or an affiliate of the state trust company has an interest; or

(3) subject to Section 28 of this Act, extend credit to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subsection (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the Commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to Section 28 of this Act, a state trust company may not directly or indirectly extend credit to an employee, officer, director or principal shareholder of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders, or affiliates of the state trust company;

(2) does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) the state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders or affiliates of the state trust company.

(d) An officer or director of the state trust company who knowingly participates in or knowingly permits a violation of this section shall be guilty of a Class D felony.

(e) The Commissioner may adopt regulations to administer and carry out this section, including regulations to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

SECTION 46. Fiduciary Responsibility.

The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) the determination of policies;

(2) the investment and disposition of property held in a fiduciary capacity; and

(3) the direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

SECTION 47. Recordkeeping.

A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company. The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

SECTION 48. Bonding Requirements.

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by regulations adopted under this act, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

(1) authorized to do business in this state; or

(2) acceptable to the Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by regulation, coverage required under subsection (a) of this section must include each director, officer and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the Commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The Commissioner shall approve the application if the Commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the Commissioner shall approve the application or set the application for hearing not later than sixty (60) days after the date the Commissioner considers the application complete and accepted for filing.

SECTION 49. Reports of Apparent Crime.

A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars ($5,000.00), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, officer, or employee shall report such robbery, shortages or apparent or suspected misapplication to the Commissioner within forty-eight (48) hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

SECTION 50. Merger Authority.

(a) With the prior written approval of the Commissioner, a state trust company may merge or consolidate with a state bank to the same extent as a state bank under the Arkansas Banking Code or with another person to the same extent as a business corporation under the Arkansas Business Corporation Act, subject to this act.

(b) Implementation of a plan of merger by a trust company and a state bank, approval of the board, and shareholders of the parties must be made or obtained as provided by the Arkansas Banking Code as if the state trust company were a state bank, except as otherwise provided by regulations adopted under this act.

(c) Implementation of the plan of merger with a person other than a state bank, approval of the board and shareholders of the parties must be made or obtained as provided by the Arkansas Business Corporation Act as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by regulations adopted under this act.

SECTION 51. Merger Application.

(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the Commissioner must be filed with the Commissioner. The Commissioner shall investigate the condition of the merging parties. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The Commissioner may approve the merger if:

(1) each resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) each resulting state trust company has in all respects complied with the statutes and regulations relative to the organization of a state trust company;

(3) all fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;

(4) each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) all conditions imposed by the Commissioner have been satisfied or otherwise resolved.

SECTION 52. Approval of Commissioner.

(a) If the Commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the Commissioner shall:

(1) endorse the face of the original and each copy with the date of approval and the word "Approved";

(2) file the original in the Department's records; and

(3) deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the Commissioner consents to a different effective date.

SECTION 53. Rights of Dissenters to Mergers.

A shareholder may dissent from the merger to the extent and by following the procedure provided by the Arkansas Business Corporation Act or regulations adopted under this Act.

SECTION 54. Authority to Purchase assets of Another Trust Institution.

(a) Subject to the provisions of this Section 54, a state trust company may purchase assets of another state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this Act or any other applicable statutes, the purchase of all or part of the assets of the trust institution does not make the purchasing state trust company responsible for any liability or obligation of the selling trust institution that is not expressly assumed by the purchasing state trust company. Except as otherwise provided by this Act, this act does not govern or prohibit the purchase by a trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) An application in the form required by the Commissioner must be filed with the Commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution by a state trust company. The Commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The Commissioner shall approve the purchase if:

(1) the acquiring state trust company will be solvent, not in a hazardous condition and have sufficient capitalization for its business and location;

(2) the acquiring state trust company has complied with all applicable statutes and regulations including without limitation any applicable requirements of Sections 78 and 79 of this Act;

(3) all fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring state trust company;

(4) all conditions imposed by the Commissioner have been satisfied or otherwise resolved; and

(5) all fees and costs have been paid.

(c) A purchase requiring an application pursuant to section 54(b) is effective on the date of approval, unless the purchase agreement provides for, and the Commissioner consents to, a different effective date.

(d) The acquiring state trust company shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

SECTION 55. Sale of Assets.

(a) The board of a state trust company, with the Commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control

accounts established with the trust company, without shareholder approval if the Commissioner finds:

(1) the interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(2) the sale is in the best interest of the state trust company's clients and creditors; and

(3) the Federal Deposit Insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of the state trust companies liabilities to clients and depositors;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the Commissioner arising out of the supervision or sale of the state trust company; and

(4) fees and assessments due the Department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the Commissioner's right to take action under any other law. The sale by a trust company of all or substantially all of its assets with shareholder approval is deemed a voluntary dissolution and liquidation and shall be governed by A.C.A. § 23-49-119.

SECTION 56. Required Vote of Shareholders.

A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders owning a majority of its voting stock.

SECTION 57. Corporate Procedure.

Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder, or in case of a shareholder's death, to such shareholder's legal representative, addressed to the shareholder's last known residence not less than ten (10) days prior to the date of such meeting. If stockholders shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such action shall have been taken, attested by an officer of the trust company, shall be transmitted to the Commissioner for approval.

SECTION 58. Authority to Liquidate; Publication.

If the Commissioner shall approve the liquidation, the Commissioner shall issue to the state trust company under the Commissioner's seal, a permit for such purpose. No such permit shall be issued by the Commissioner until the Commissioner shall be satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the Commissioner shall refuse to issue a permit, and shall be authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this Act. When the Commissioner shall approve the voluntary liquidation of a state trust company, the directors of said state trust company shall cause to be published in a newspaper with a substantially statewide circulation published in the city of Little Rock, Arkansas, a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks.

SECTION 59. Examination and Reports.

When any state trust company shall be in process of voluntary liquidation, it shall be subject to examination by the Commissioner, and shall furnish such reports from time to time as may be called for by the Commissioner.

SECTION 60. Unclaimed Property.

All unclaimed property remaining in the hands of a liquidated state trust company shall be subject to the provisions of the Uniform Disposition of Unclaimed Property Act, A.C.A. § 18-28-201 et seq.

SECTION 61. Sale or Transfer of Property.

Upon the approval of the Commissioner, any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the Commissioner and by a majority vote of its board of directors. A certified copy of the minutes of any meeting at which such action is taken, attested by an officer of the trust company, together with a copy of the contract of sale and transfer, shall be filed with the Commissioner. Whenever voluntary liquidation shall be approved by the Commissioner or the sale and transfer of the assets of any state trust company shall be approved by the Commissioner, the charter of such state trust company shall be canceled, subject, however, to its continued existence, as provided by this Act and the general law relative to corporations.

SECTION 62. When Commissioner May Take Charge.

The Commissioner may forthwith take possession of the business and property of any state trust company to which this Act is applicable whenever it shall appear that such state trust company:

(1) Has violated its charter or any laws applicable thereto;

(2) Is conducting its business in an unauthorized or unsafe manner;

(3) Is in an unsafe or unsound condition to transact its business;

(4) Has an impairment of its capital;

(5) Is in a hazardous condition;

(6) Has become otherwise insolvent;

(7) Has neglected or refused to comply with the terms of a duly issued lawful order of the Commissioner;

(8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the Commissioner;

(9) Is employing officers who have refused to be examined upon oath regarding its affairs; or

(10) Has made a voluntary assignment of its assets to trustees.

SECTION 63. Directors May Act.

Any state trust company may place its assets and business under the control of the Commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the Commissioner, and, upon taking possession of the state trust company, the Commissioner, or duly appointed agent, shall retain possession thereof until such state trust company shall be authorized by the Commissioner to resume business or until the affairs of said state trust company shall he fully liquidated as herein provided. No state trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner, as herein provided. Whenever any state trust company for any reason shall suspend operations for any length of time, the state trust company shall, immediately upon such suspension of operations, be deemed in the possession of the Commissioner and subject to liquidation hereunder.

SECTION 64. Application of Arkansas Banking Code.

When the Commissioner, or duly appointed agent, shall take possession of any state trust company under Sections 62 or 63 hereof, the Commissioner or agent shall proceed with the

dissolution and liquidation of the state trust company under the procedures established for the dissolution and liquidation of state banks under the Arkansas Banking Code.

SECTION 65. Companies Authorized to Act as a Fiduciary.

(a) No company shall act as a fiduciary in this state except:

(1) A state trust company;

(2) A state bank;

(3) An association organized under the laws of this state and authorized to act as a fiduciary pursuant to A.C.A. § 23-37-101 et seq.

(4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C. 92a.

(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary.

(6) A subsidiary trust company authorized to act as a fiduciary under A.C.A. § 23-47-801 et seq.

(7) An out-of-state bank with a branch in this state established or maintained pursuant to The Arkansas Interstate Banking and Branching Act (A.C.A. § 23-48-901 et seq.) or a trust office licensed by the Commissioner pursuant to this Act.

(8) An out-of-state trust company with a trust office licensed by the Commissioner pursuant to this Act.

(b) No company shall engage in an unauthorized trust activity.

SECTION 66. Activities Not Requiring a Charter, Etc.

Notwithstanding any other provision of this Act, a company does not engage in the trust business or in any other business in a manner requiring a charter or license under this Act or in an unauthorized trust activity by:

(a) acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(b) rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court or the laws of this state;

(c) acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Real Estate License Law, A.C.A. 17-42-101 et seq.;

(e) engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Arkansas Securities Department or the Securities and Exchange Commission;

(f) engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Arkansas Insurance Department to the extent that the activity is regulated by the Arkansas Insurance Department;

(g) engaging in the lawful sale of prepaid funeral benefits under a permit issued by Arkansas Insurance Department under Arkansas Prepaid Funeral Benefits Law, A.C.A. § 23-40-101 et seq. or engaging in the lawful business of maintaining a perpetual care cemetery trust pursuant to A.C.A. § 20-17-904 or a permanent maintenance fund for perpetually maintained cemeteries under A.C.A. § 20-17-1001 et seq.;

(h) acting as trustee under a voting trust as provided by A.C.A. § 4-26-706 or A.C.A. § 4-27-730;

(i) engaging in other activities expressly excluded from the application of this Act by regulations issued by the Commissioner;

(j) rendering services customarily performed by a public accountant or a certified public accountant in a manner authorized by the Arkansas State Board of Public Accountancy; or

(k) provided the company is a trust institution and is not barred by order of the Commissioner from engaging in a trust business in this state pursuant to Section 82(b) hereof, (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the same from a client or other person in this state; or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

SECTION 67. Trust Business of State Trust Institution.

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this Act, at a branch or at any other authorized location other than an office or branch.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the Commissioner applicable to the state trust institution; provided, however, that the Commissioner may waive any such prohibition if he or she determines, by

order or regulation, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

SECTION 68. Trust Business of Out-Of-State Trust Institution.

An out-of-state trust institution which establishes or maintains one or more offices in this state under this Act may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

SECTION 69. Name of Trust Institution.

A state trust company or out-of-state trust institution may register any name with the Commissioner in connection with establishing a principal office or trust office in this state pursuant to this Act, except that the Commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

SECTION 70. Trust Business.

A state trust company or a state bank may:

(a) perform any act as a fiduciary;

(b) engage in any trust business;

(c) exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this Act; and

(d) if a state trust company, exercise any other power authorized by Section 4 of this Act.

SECTION 71. Branches and Offices of State Trust Institutions.

(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this Act and at a branch.

(b) Notwithstanding the foregoing subsection (a), a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted to be conducted at such an office by the laws of the host state applicable to trust institutions chartered by the host state.

SECTION 72. State Trust Company Principal Office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(d) The change of principal office shall take effect thirty (30) days after the date the Commissioner receives the notice pursuant to paragraph (c) above, unless the Commissioner establishes another date or unless prior to such day the Commissioner notifies the state trust company that it must establish to the satisfaction of the Commissioner that the relocation is consistent with the original determination made under Section 6(b) of this Act for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the Commissioner.

SECTION 73. Trust Office.

(a) A state trust institution may establish or acquire and maintain trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Commissioner setting forth the name of the state trust institution, the location of the proposed additional trust office and a general description of the surrounding area, whether the location will be owned or leased, furnish a copy of the resolution adopted by the board authorizing the additional trust office, general description of the activities to be conducted, an estimate of the cost of the trust office and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence business at the additional trust office thirty (30) days after the date the Commissioner receives the notice, unless the Commissioner specifies another date.

(c) The thirty (30) day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

SECTION 74. Out-of-State Offices.

(a) A state bank, a state trust company or a savings association chartered under the laws of this state may establish and maintain a new trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the trust institution, the location of the proposed office and a general description of the surrounding area, whether the location will be owned or leased, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence business at the additional office thirty (30) days after the date the Commissioner receives the notice, unless the Commissioner specifies another date.

(c) The thirty (30) day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the additional office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 75. Trust Business at a Branch or Trust Office.

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains (i) a trust office in this state as permitted by this act or (ii) a branch in this state.

SECTION 76. Establishing an Interstate Trust Office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this act may establish and maintain a new trust office in this state.

(b) An out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under Section 75 of this act, in the state where such out-of-state trust institution has its principal office.

SECTION 77. Acquiring an Interstate Trust Office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this act may acquire and maintain a trust office in this state.

(b) No out-of-state trust institution may maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where such out of state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under Section 75 of this act, in the state where such out-of-state trust institution has its principal office.

SECTION 78. Requirement of Notice.

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this act shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the Commissioner.

SECTION 79. Conditions for Approval.

(a) No trust office of an out-of-state trust institution may be acquired or established in this state under this act unless:

(1) The out-of-state trust institution shall have confirmed in writing to the Commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state.

(2) The notificant shall have provided satisfactory evidence to the Commissioner of compliance with (i) any applicable requirements of A.C.A. § 4-27-1501 et seq. and (ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(3) The Commissioner, acting within sixty (60) days after receiving notice under Section 78, shall have certified to the home state regulator that the requirements of this act have been met and the notice has been approved or, if applicable, that any conditions imposed by the Commissioner pursuant to paragraph (b) below have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office sixty (60) days after the date the Commissioner receives the notice unless the Commissioner specifies another date, provided, with respect to an out-of-state trust institution that is not a depository

institution and for which the Commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company pursuant to Section 6(b) or Section 10 of this Act, such institution shall have satisfied such conditions and provided to the Commissioner satisfactory evidence thereof.

(c) The sixty (60) day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 80. Additional Trust Offices.

An out-of-state trust institution that maintains a trust office in this state under this act may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in Section 73.

SECTION 81. Examinations; Periodic Reports; Cooperative Agreements; Assessment of Fees.

(a) To the extent consistent with subsection (c) of this section, the Commissioner may make such examinations of any office established and maintained in this state pursuant to this act by an out-of-state trust institution as the Commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code shall apply to such examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this act. The required reports shall be provided by such trust institution or by the home state regulator. Any reporting requirements prescribed by the Commissioner under this subsection (b) shall be (i) consistent with the reporting requirements applicable to state trust companies and (ii) appropriate for the purpose of enabling the Commissioner to carry out his or her responsibilities under this act.

(c) The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the Commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under A.C.A. § 19-11-232.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state; provided, that the Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this act or to ensure compliance with the laws of this state; but provided further, that, in the case of an out-of-state trust institution, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

SECTION 82. Enforcement.

Consistent with the Arkansas Administrative Procedure Act, A.C.A. § 25-15-201 et seq., after notice and opportunity for hearing,

(a) The Commissioner may determine:

(1) that an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner; or

(2) that a company is engaged in an unauthorized trust activity.

In either event, the Commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the office or the company were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state;

(b) In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by Section 82 (a) without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

SECTION 83. Notice of Subsequent Merger, Closing, Etc.

Each out-of-state trust institution that maintains an office in this state pursuant to this act, or the home state regulator of such trust institution, shall give at least thirty (30) days prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the Commissioner of (i) any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 *et seq.*, or any successor statutes thereto, (ii) any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person or (iii) the closing or disposition of any office in this state.

SECTION 84. Commissioner Shall Supervise and Examine Authorized Trust Institutions.

Every authorized trust institution shall be under the supervision of the Commissioner. The Commissioner shall execute and enforce through the Department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this Act, the Commissioner is hereby empowered to promulgate

such regulations not inconsistent with the provisions of the Act, as may, in hi s opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under his supervision taking into consideration the appropriate interest of the creditors, stockholders, and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this Act shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all regulations and instructions that may be promulgated or issued by the Commissioner.

SECTION 85. Examinations; Assessments.

(a) The Commissioner may examine each state trust company every twenty-four (24) months or more often as he determines is necessary to safeguard the interests of the public and the safety and soundness of the institution.

(b) Each state chartered trust company shall pay to the Department within ten (10) days after notice from the Commissioner in January and July of each year an assessment fee to defray the costs of examination and the costs of operations of the Department which will be charged in accordance with an assessment fee schedule approved by the Commissioner.

(c) The Commissioner may accept examinations of a state trust company by a federal or other governmental agency in lieu of an examination under this section or may conduct examinations off a state trust company jointly or concurrently with a federal or other governmental agency.

SECTION 86. Statements of Condition and Income.

Each state trust company shall periodically file with the Commissioner a copy of its statement of condition and income. The Commissioner shall have the power to call for these reports whenever deemed necessary, in order to obtain a full and complete knowledge of the condition of the trust company.

SECTION 87. Confidential Records.

(a) The following records of the Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with Department regulations:

(1) All examination reports filed with the Department;

(2) All records disclosing information obtained from examinations;

(3) Investigations and reports revealing facts concerning a state trust company or the customers of such organization; and

(4) All personal financial statements submitted to the Department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may, in the Commissioner's discretion, be disclosed as follows:

(1) Under a validly issued subpoena and, in the interest of justice, the Commissioner may waive the privilege created herein and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction where such order is designed to protect the confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the Department may be disclosed within the discretion of the Commissioner if the Commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the state trust company; and

(3) To federal financial institutions regulatory agencies and financial institutions regulatory agencies of other states.

(c) The Commissioner shall have the power to promulgate regulations with regard to disclosure of confidential information.

SECTION 88. Administrative Orders; Penalties for Violation.

(a) In addition to any other powers conferred by this Act, the Commissioner shall have the power to:

(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this Act or any lawful regulation issued thereunder.

(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution.

(3) Order any company to cease engaging in an unauthorized trust activity.

(4) Enter any order pursuant to Section 82 of this Act.

(b) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000.00) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (1) of subsection (a) of this section. Provided further, the Commissioner may impose a civil money penalty of not more

than five hundred dollars ($500.00) per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (a)(2) or (a)(3) of this section.

SECTION 89. Notice and Opportunity for Hearing.

Consistent with the Arkansas Administrative Procedure Act, A.C.A. § 25-15-201 et seq., notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

SECTION 90. Subpoena Power and Examination Under Oath.

The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the Commissioner.

SECTION 91. Removal of Directors, Officers and Employees.

Consistent with Section 89 hereof, the Commissioner shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any authorized trust institution, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution, or who persistently violates the laws of this State or the lawful orders, instructions, and regulations issued by the Commissioner.

SECTION 92. Delegation and Fiduciary Responsibility.

(a) Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management or administrative function if such person exercises reasonable care, judgment and caution in:

(1) selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) establishing the scope and other terms of any delegation; and

(3) reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee, except as provided in Section 108, or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

SECTION 93. Affiliates.

(a) Any person acting as a trustee or in any other fiduciary capacity under Section 92 may hire and compensate, as a delegate, an affiliate of such person if:

(1) authorized by a trust or fiduciary instrument;

(2) authorized by court order;

(3) authorized in writing by each affected client; or

(4) the standards of Section 92 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by non-affiliates that provide substantially similar services.

SECTION 94. Fee Determination.

The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this Act shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

SECTION 95. Disclosure of Potential Conflicts of Interest.

Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after the effective date of this Act, which company has any potential or actual conflict of interest which may reasonably be expected to have an impact on the independence or judgment of such trustee or fiduciary, shall disclose appropriate information concerning the actual or potential conflict of interest prior to entering into any written or oral trust or fiduciary agreement with such client or prospective client.

SECTION 96. Interests in Trust Institutions prohibited.

(a) Neither the Commissioner nor any employee or officer of the Department who participates in the examination of a trust institution, or who may be called upon to make an official decision or determination affecting the operation of a trust institution, shall be an officer, director, attorney, owner, or holder of stock in any state trust company, or any company which owns or controls a state trust company, or receive, directly or indirectly, any payment or gratuity from any such organizations. A person subject to this section may not borrow money from a state trust company.

(b) A person subject to this section may:

(1) Be a depositor in any trust institution that the Department regulates; and

(2) Purchase trust or fiduciary services, other than credit services, under rates and terms generally available to other customers of the trust institution.

SECTION 97. Designation of Trustee.

Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of such person.

SECTION 98. Choice of Law Governing Trusts.

Any trust institution that maintains a trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern any written agreement between such trust institution and its client or any instrument under which the trust institution acts for a client.

SECTION 99. Choice of Law Governing Fiduciary Investments.

Any trust institution that maintains a trust office in this state and its affected clients may designate either (i) this state, (ii) a state where affected clients reside or (iii) the state where such trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between such trust institution or its client and any other instrument under which the trust institution acts for a client.

SECTION 100. Prudent Investor Rule.

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

SECTION 101. Standard of Care; Portfolio Strategy; Risk and Return Objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purpose of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this act.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

SECTION 102. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

SECTION 103. Duties at Inception of Trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this act.

SECTION 104. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries. This duty is consistent with and shall not be construed to abrogate the powers granted to banks and trust companies pursuant to A.C.A. § 28-71-104.

SECTION 105. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

SECTION 106. Investment Costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

SECTION 107. Reviewing Compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

SECTION 108. (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

SECTION 109. Language Invoking Standard of Act.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this act: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments,"

"using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

SECTION 110. Application to Existing Trusts.

This act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only decisions or actions occurring after that date.

SECTION 111. Uniformity of Application and Construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the States enacting it.

SECTION 112. Arkansas Code Annotated § 23-45-104 is amended to read as follows:

23-45-104. Unauthorized activity as a financial institution -- Incorporation of industrial loan institutions prohibited -- Individuals and partnerships not to transact general commercial banking business.

(a) From and after May 31, 1997,

(1) It shall be unlawful for any person, by whatever name called, to do business as a bank within this state or to maintain any office in this state for the purpose of doing such business, except state banks, registered out-of-state banks and national banks chartered to do business in this state.

(2) No certificate of incorporation for a new state bank in this state shall be issued, and no new state bank shall be permitted to engage in business within Arkansas except by permission of the Commissioner and upon approval of an application for a new state bank charter by the Commissioner and the Banking Board. The issuance of such certificate shall be within the sole discretion of the Commissioner and the Banking Board, and the giving of such permission shall be within the sole discretion of the Commissioner.

(3) Whenever it shall appear to the Commissioner that any person is conducting business as a state bank without authority, the Commissioner may determine that such person is fully subject to the Commissioner's supervisory and regulatory powers, and to the provisions of the Arkansas Banking Code.

(4) No new industrial loan institution shall be incorporated in this state after the effective date of the Arkansas Banking Code.

(5) No partnership or individual, or other unincorporated person, may lawfully transact a general commercial banking business in this state after the effective date of the Arkansas Banking Code.

~~(6) No person, other than a bank, national trust company or subsidiary trust company, shall be authorized or permitted to engage, conduct or perform any business operations in this state in which it acts on behalf of others as a trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which banks, subsidiary trust companies and national trust companies are authorized to act.~~

(b) Nothing in this section shall be construed to prohibit or interfere with the operations of duly and lawfully organized savings and loan associations or credit unions qualified to do business in this state.

SECTION 113". Arkansas Code Annotated § 23-49-101 is amended to read as follows:

"23-49-101. Definitions.

As used in this act:

(1) "Chancery Court" means the court that the Department has filed the notice of possession with, under this act. The Chancery Court will make a determination for sale of assets only and not a determination of whether or not to take charge of an institution under the Commissioner's supervision;

(2) "Federal deposit insurance agency" means an agency or instrumentality of the United States that insures to any extent the deposits of a depository institution, including the Federal Deposit Insurance Corporation ("FDIC");

(3) "Insolvent institution" means ~~a state bank or subsidiary trust company~~ an institution that:

(A) Is, in the opinion of the Commissioner, incapable of or unlikely to meet the demands of creditors or depositors on a timely basis;

(B) Has liabilities in excess of the total value of its assets as determined by the Commissioner; or

(C) Has been advised by the FDIC of the FDIC's intention to withdraw deposit insurance coverage;

(4) "Institution" means a state bank, state trust company or subsidiary trust company.

SECTION 114. Arkansas Code Annotated § 23-71-105 is amended to read as follows:

"28-71-105. Standard of judgment and care - Prudent man rule.

In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property held in a fiduciary capacity, other than trusts subject to the Prudent Investor Rule as set forth in A.C.A. "Sections 100 through 111 of the Arkansas Trust Institution Act, the fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital."

SECTION 115. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 116. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 117. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED:3-31-97

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